SUPREME COURT OF THE UNITED STATES.

No. 411.

HORATIO SEYMOUR ET AL., HEIRS OF HENRY SEYMOUR, DECEASED, APPELLANTS,

vs.

L. C. P. FREER, ADMINISTRATOR, &c., OF JEREMIAH PRICE, DECEASED.

IN ERROR TO THE CIRCUIT COURT OF THE UNITED STATES FOR THE NORTHERN DISTRICT OF ILLINOIS.

INDEX.

	Original.	Print.
Transcript	4	4
Bill of complaint	9	9
Summons	47	22
Affidavit of non-residence	48	23
Publication notice	50	24
Appearance and motion	53	25
Bond	54	26
Fee bill	56	27
Petition	58	28
Demurrer to bill	63	30
Record entry, death of complainant suggested, and L. C. P. Freer substituted	66	31
Record entry, demurrer overruled	67	31
Stipulation as to answer of J. F. Seymour *et al*	68	32
Answer of J. F. Seymour *et al*	70	33
Stipulation as to oath to answer of H. Seymour	86	38
Answer of H. Seymour	87	39
Replication to answer of J. F. Seymour *et al*	105	46
Replication to answer of H. Seymour	107	47
Stipulation as to money substituted for injunction	109	48
Stipulation as to payments, &c	111	49
Stipulation as to Exhibits B and C	113	50
Record entry, cause set down for hearing	114	50
Stipulation as to Exhibit A	115	50
Hearing, &c	118	52
First decree	121	53
Report of master	127	55

	Original.	Print.
Exhibit F	153	68
Exhibit G	174	75
Exhibit H	191	81
Record entry, report confirmed	200	85
Final decree	202	85
Stipulation as to sale by receiver, and as to decree	224	93
Appeal bond	225	94
Motion to alter date of decree	228	95
Record entry, order overruling decree	231	96

1 Pleas in the circuit court of the United States for the northern district of Illinois, held at the United States court-room in the city of Chicago, in the district aforesaid, before the Hon. Thomas Drummond, district judge of said district, and in the absence pro tempore of the Hon. David Davis one of the justices of the Supreme Court of the United States, sole judge of said circuit court, sitting in chancery, on Thursday, the fifteenth day of November, in the year of our Lord one thousand eight hundred and sixty-six, and of our independence the ninety-first year.

WM. H. BRADLEY, *Clerk.*

L. C. P. FREER, administrator de bonis non of Jeremiah Price, deceased,
vs.
HORATIO SEYMOUR and ORIGEN S. SEYMOUR, survivors of Epaphro Seymour, as executors of the last will and testament of Henry Seymour, deceased, and the said Horatio Seymour, John F. Seymour, Rutger B. Miller, and Mary F., his wife, and Edmund A. Wetmore, her trustee, Edward F. Shonnard, and Sophia A., his wife, Ledyard Lincklaen, Helen C. Lincklaen, Roscoe Conk-
2 ling, and Julia C., his wife, as heirs and devisees of said Henry Seymour, deceased.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

Be it remembered, that on the sixth day of July, in the year of our Lord one thousand eight hundred and fifty-seven, came Horatio Seymour, Origen S. Seymour, John F. Seymour, Rutger B. Miller, Mary F. Miller, Edward A. Wetmore, trustee of Mrs. Mary F. Miller, Edward F. Shonnard, Sophia A. Shonnard, Ledyard Lincklaen, Helen C. Lincklaen, Roscoe Conkling, and Julia C. Conkling, defendants, by their solicitor, and filed in the office of the clerk of the circuit court of the United States for the northern district of Illinois, at Chicago in said district, their transcript of a record in chancery from the Cook county court of common pleas in the State of Illinois, in a cause wherein John High, jr., surviving administrator of the estate of Jeremiah Price, deceased, was complainant, and the last aforesaid defendants, with Epaphro Seymour, were defendants; which said transcript, together with the original files in said entitled cause, viz: the bill of complaint, the summons, affidavit of non-residence, publication notice, appearance and motion, bond, fee bill,
3 and petition, are respectively in the words and figures following, to wit:

4 *Transcript.*

STATE OF ILLINOIS, *County of Cook, ss:*

Pleas before the honorable John M. Wilson, judge of the Cook county court of common pleas, within and for the county of Cook, and State of Illinois, at a special term of the Cook county court of common pleas, begun and holden at the court-house in the city of Chicago, in said county and State, on the first Tuesday, being the second day of June, in the year of our Lord one thousand eight hundred and fifty-six, and of the independence of the United States the eighty-first.

Present: The Hon. John M. Wilson, judge; Carlos Haven, prosecuting attorney; John L. Wilson, sheriff.

Attest:

WALTER KIMBAL, *Clerk.*

Be it remembered, that on the twentieth day of June, in the year of our Lord one thousand eight hundred and fifty-seven, the following, among other proceedings, were had and entered of record in said court, to wit:

5 Cook county court of common pleas, in chancery.—June term, 1857.

JOHN HIGH, junior, surviving administrator of the estate of Jeremiah Price, deceased,
vs.
ORIGEN E. SEYMOUR, HORATIO SEYMOUR, JOHN F. Seymour, Rutger B. Miller, Mary T. Miller, Edmund A. Wetmore, trustee of Mrs. Mary T. Miller, Ledyard Lincklaen, Helen C. Lincklaen, Edwark T. Shonnard, Sophia A. Shonnard, Roscoe Conkling, and Julia C. Conkling, executors of and heirs at law and legal representatives of Henry Seymour, deceased.

And now comes the said complainant by Mather, Taft & King, his solicitors, and suggests to the court the death of Epaphro Seymour, one of the defendants in this cause.

And on the same day, to wit, the twentieth day of June, A. D. 1857, the following further proceedings were had in said cause and entered of record, to wit:

6 And now this day come the said defendants into court, by A. C. Coventry, their solicitor, and enter their appearance in said suit for the purpose of filing their petition for removal of said suit, and file their petition in said suit duly sworn to, praying for the removal of said suit to the circuit court of the United States in and for the northern district of Illinois, and now here move the court to enter an order that the said suit be so removed; according to the prayer of said petition.

Now the court having considered of the petition, and the said defendants, by their solicitor, having been heard, and the said complainant, John High, jr., by his counsel, Messrs. Mather and Taft, having been heard against the granting of said petition, and the court being duly advised of the matters and facts in said petition set forth, by virtue of the power therein vested, and in pursuance of the statute in such case made and provided, doth order and decree, and it is hereby ordered and decreed, that the said motion be granted, and that said suit be removed to the circuit court of the United States in and for the northern district of Illinois, on the defendants
7 filing a bond in the sum of one thousand dollars, to be approved of by this court, conditioned that they, the said defendants, will, on or before the first day of the next term of circuit court of the United States in and for the northern district of Illinois, file in the said circuit court aforesaid copies of the process against them. And also for their said defendants in appearing in said court on the first day of the next term thereof.

And now, this day, again came the said defendants into court and file the bond of Alexander C. Coventry, of Chicago, in the State of Illinois, in the full sum of one thousand dollars, in pursuance of the order heretofore on this day entered in said suit. And the court having duly considered on said bond, and being duly advised of the contents of the same, here approves of the same, and orders said cause to be removed to said circuit court of the United States in and for the northern district of Illinois, in pursuance of the prayer of the petition filed in this cause, and of the order of this court heretofore entered in this suit.

8 STATE OF ILLINOIS, *Cook County, ss:*

I, Walter Kimball, clerk of the Cook county court of common pleas in and for said county, do hereby certify that the above and foregoing is a true and correct copy of all the proceedings had in said court in the above-entitled cause.

In testimony whereof I hereunto subscribe my name and affix my official seal, at the city of Chicago, this 6th day of July, 1857.

[SEAL.] WALTER KIMBALL, *Clerk.*

Indorsed: Filed July 6th, 1857.

WM. H. BRADLEY, *Clk.*

9 *Bill of complaint.*

To the honorable John N. Wilson, judge of the Cook county court of common pleas, in chancery sitting:

Humbly complaining, showeth unto your honor your orator, John High, jr., survivor of Phebe Meeker, deceased, and sole surviving administrator of the estate of Jeremiah Price, late of the city of Chicago, in the county of Cook, and State of Illinois, deceased; that on or about the ninth day of May, in the year of our Lord one thousand eight hundred and thirty-five, a certain agreement in writing

was made and entered into by and between the said Jeremiah Price in his lifetime and one Henry Seymour, of Utica, in the State of New York, in his lifetime, both of whom are since deceased; by the terms of which agreement in writing aforesaid, bearing date the said ninth day of May, A. D. 1835, and signed by each of the above-named parties thereto, a copy whereof is hereunto annexed, marked Exhibit A, which, when admitted or proved, your orator prays
10 may be taken as part and parcel of this bill of complaint and to which he prays leave to refer, it was agreed on the part of the said Jeremiah Price that he would forthwith devote his time and attention and exercise his best judgment in exploring and purchasing land to an amount not exceeding five thousand dollars, in the States of Illinois, Indiana, and Ohio, and in the (then) territories (now States) of Michigan and Wisconsin, or in such of them as he (the said Jeremiah Price) might find most advantageous to the interest of said Henry Seymour, in whose name it was agreed the contracts and conveyances (for the lands purchased as aforesaid) should be made and taken, such purchases to made after full and careful searches and explorations for the most profitable investments on or near the sites or expectant sites of towns and places of business and in general in tracts of ground of moderate extent.

And in and by said instrument in writing it was agreed on the part of said Henry Seymour that he would furnish the sum of five thousand dollars for the purchases contemplated by said instrument, and that the lands so purchased as aforesaid (as specified and provided for in said agreement in writing) should be sold within five years from the (then) present time, (meaning within five years from
11 the aforesaid date of said agreement in writing,) and that out of the profit by such purchase and sale, after charging to the investment the taxes and other charges, if any, together with seven per cent. interest on the investment and charges last mentioned, there should be paid to the said Jeremiah (Jeremiah Price meaning) one-half of the same, (meaning one equal half of said profits after making the deductions stipulated for; that is to say, the moneys invested, the taxes, and other charges, together with seven per cent. interest on the said investment, taxes, and charges,) which said half of the profits it was agreed and declared in and by said agreement or instrument in writing should be in full of his (the said Jeremiah Price meaning) services and expenses of every kind in making the aforesaid explorations, searches, and in doing all such other things as might be requisite and proper in making the contemplated purchases, (meaning the purchases provided for in and by said agreement in writing.) And it was further thereby agreed that the purchases aforesaid should be made during the (then) present year, (the year 1835 meaning wherein said contract was dated,) and that no payment for services or expenses should be made by said Henry Seymour except from the profits made as aforesaid, which said agreement is recorded in
12 Cook county, in book V of deeds, page 306, in the recorder's office; date of recording, Oct. 34th, 1837.

Your orator further states to your honor that said contract in writ-

ing was made between the parties thereto in the State of New York, and contemporaneously therewith the said Seymour advanced and paid to the said Price the sum of five thousand dollars for investment in lands, as stipulated and provided for in said contract; and the said Jeremiah Price, on his return to the city of Chicago in the month of June in the same year, (1835,) immediately entered upon the business of exploring and purchasing lands in the name of said Henry Seymour, taking all conveyances directly to him and in his name, in pursuance of and according to the terms and instructions contained in the aforesaid instrument in writing, a copy whereof, duly signed by the aforesaid parties, was held by either party; that said Price diligently and faithfully continued and pursued said explorations and investments from the 15th of June, 1835, to the 28th day of October, in the same year, at which last period the sum of four thousand nine hundred and sixty-six dollars and 9-100 of the moneys so advanced as aforesaid had been and was invested; and subsequently, on the 8th day of March, A. D. 1836, a further sum of twenty-five dol-
13 lars was invested in like manner from said moneys, making the whole sum invested and paid out from said moneys, (including therein nineteen 75-100 dollars paid for maps of lands and lots purchased and recording deeds,) four thousand nine hundred and ninety-two 34-100 dollars, and leaving in the hands of said Price unexpended by said investments the sum of seven dollars and sixty-six cents only, which was subsequently paid out by said Price in his account of taxes and expenses of said lands.

And your orator further shows to your honor that the number of acres so purchased as aforesaid, being also of lands and lots situate within the State of Illinois, in the aggregate amount to two thousand four hundred and forty acres and twenty-two hundredths of an acre, besides lot 14 block 31 in the school section, part of the town or village of Jolliett, for a more particular description of said lands and lots so purchased as aforesaid your orator prays leave to refer to a schedule and description of said lands and lots which is annexed to this your orator's bill of complaint, marked Exhibit B. and which he prays may be taken as part and parcel thereof, and which is taken and made by an exact copy of original entries of said pur-
14 chases made by said Jeremiah Price in his lifetime on his real estate book in his proper handwriting, showing the date of each purchase, a description of the premises, the number of acres, and the price paid in each case for the lands and lots so purchased.

Your orator further shows that from the time of purchasing said lands, in the year 1835 aforesaid, down to the month of July, A. D. 1854, the date of the decease of the said Jeremiah Price, he, the said Jeremiah Price, acted as agent for the said Henry Seymour, or his estate and heirs and devisees, in guarding and taking care of said lands, preventing trespasses and other injuries thereto, and in paying taxes on said lands, for which purpose moneys were at various times remitted to him from said Seymour's heirs, after his death, or from persons acting on behalf of his estate, and the heirs and devisees aforesaid, full accounts of which payments and receipts are

hereto annexed, which your orator prays may be taken as a part and parcel of this his said bill of complaint.

The account of payments being marked "Exhibit C," and the account of receipts "Exhibit D," all of which are taken from original entries made by said Jeremiah Price in his lifetime on his real estate book.

15 And your orator further shows to your honor that by the terms of said contract in writing, between said parties, as above specified, it was expressly assumed and agreed upon by said Henry Seymour, that the lands so purchased as aforesaid should be sold within five years from the date of said agreement, which period allowed and agreed upon for said sale expired in the month of May, in the year 1840, but your orator shows and states to the court that neither said Henry Seymour in his lifetime, nor his heirs and devisees after his decease, took any measures to effect a sale of said lands at any time within the five years aforesaid, or at any period within the lifetime of the said Jeremiah Price, which neglect your orator supposes to have resulted from the unfavorable state of the market and the unsaleableness of said lands, and the fact which became apparent, that the interests of all concerned and interested therein would be promoted by holding on for better times in the real estate market instead of selling prematurely, and under which circumstances your orator states and shows to the court as his belief that the said Jeremiah Price did not urge and insist upon an early sale of said lands according to the strict requirements of said

16 agreement in writing. Nevertheless, your orator states as his belief, and charges as true, both in law and in fact, that nothing has ever been done or suffered on the part of said Price in the premises to excuse or release the said Seymour, his heirs and devisees, or personal representatives, from a full performance of all the obligations and agreements of said Seymour by contract as aforesaid in reference to the eventual sale of said lands and the payment of one entire and equal half part of the clear profits to arise from the sales thereof to the said Price or to his administrator in course of administration.

And your orator further states and shows to the court that the said Jeremiah Price departed this life at Chicago, in the county of Cook, in the month of July, in the year 1854, leaving no last will and testament except a nuncupative will, whereby certain bequests were made by him to religious and charitable institutions, which nuncupative will, being afterwards reduced to writing and proved according to law, was admitted to probate and recorded in said county of Cook, and that letters of administration were granted and issued out of the county court of the said county of Cook, bearing date the 15th of July, A. D. 1854, whereby the administration of all and sin-

17 gular the goods and chattels, rights and credits, which were of the said Jeremiah Price, deceased, were by the said county court held before H. L. Rucker, esquire, judge thereof, in due form of law committed to your orator, and one Phebe Meeker, of Chicago, aforesaid, as administrator and adminis-

tratrix, on their giving bonds with surety required by said county court, and in all respects conforming to the statutes in such case made and provided, which letters of administration, duly issued under the seal of said court and bearing date as aforesaid, your orator brings now here into court and is ready to prove the same as this court may require, together with a copy of said nuncupative will as proved, allowed, and recorded in and by said county court.

And your orator further shows that afterwards, to wit, on or about the 30th day of October, in the year 1855, the said Phebe Meeker, administratrix as aforesaid, departed this life at Chicago, in the county of Cook aforesaid, leaving your orator sole surviving administrator of said estate.

And your orator further shows that in the month of August, 1837, or about that time, the said Henry Seymour departed this life at the city of Utica, in the county of Oneida, and State of New
18 York, leaving a last will and testament by him made and executed, which was subsequently proved and recorded in the State of New York, and leaving the following named persons his heirs-at-law and devisees, all of whom, by the terms of said will and the laws of the State of New York, your orator charges are interested in all his real and personal estate, to wit: Horatio Seymour and John F. Seymour, sons of said Henry Seymour, Mary F. Miller, wife of Rutger B. Miller, Sophia A. Shonnard, wife of Edward F. Shonnard; Helen C. Lincklaen, wife of Ledyard Lincklaen, and Julia C. Conkling, wife of Roscoe Conkling, daughters of said Henry Seymour.

And your orator further shows that by said last will and testament Epaphro Seymour, of Brattlesboro', Vermont; Horatio Seymour, of Utica, in the State of New York, a son of testator, and Origen S. Seymour of Litchfield, in the State of Connecticut, were named as executors, and the estate of said Seymour was in and by said will directed to descend to and be distributed among the said six, his children above named, as in case of intestacy, except as to the share of the Mary F. Miller, wife of Rutger B. Miller, the title whereto was, by the terms of the said will, vested in said executors as trustees for said Mary F. Miller during her life.

19 And your orator further shows that the said executors above named took upon them the burden of said will and trust as executors and trustees, but have since resigned their charge as trustees of said Mary F. Miller, and one Edmund A. Wetmore, of the city of Utica, has been appointed trustees in their stead, and now holds said trust by appointment of a court of chancery powers having jurisdiction in the premises in the said State of New York, where the cestuy que trust resides; and by reason of the facts above stated your orator believes it to be necessary, and therefore prays that the said Edmund A. Wetmore as trustee of Mary F. Miller, together with the said executors of the last will and testament of the said Henry Seymour as such, and his said heirs and devisees, and the husbands of the four daughters be made parties to this suit.

And your orator further shows that in behalf of the heirs and de-

visees as well as of the executors of said Henry Seymour, deceased, he, your orator, has acted as agent for said heirs and devisees under a retainer and employment confided to him by them, or on their behalf, since the death of the said Jeremiah Price, to see to the lands and real estate aforesaid, to pay the taxes and make sales
20 thereof, and the accounts of your orator in that behalf hereto annexed and subjoined to the accounts before referred to of the estate of the said Jeremiah Price, under proper headings, will show a proper continuation of the respective accounts of expenditures on as well as receipts from said lands, with the accounts of sales thereof, and proceeds received to the present time, and to which continued accounts, also, your orator prays leave to refer.

Your orator further states and shows to your honor that the amount of sales hitherto made by your orator in his said agency is one hundred and sixty acres, besides the undivided half of eighty acres, in all equal to two hundred acres, at an aggregate price of sixty-nine thousand two hundred dollars ($69,200,) whereof in down payments and other payments received by your orator on the first day of September, 1856, and at different times since, there has been paid to your orator as agent as aforesaid the sum of thirty-three thousand five hundred and ninety-eight dollars and ten cents, ($33,598 10,) out of which, as your orator's annexed accounts will show, the sum of two thousand seven hundred and forty-two dollars and sixty-one cents ($2,742 61) has been used and appropriated by your orator for expenses, commissions on sales, and other expenses incident to
21 the lands aforesaid; and of the excess or residue of said receipts in cash over and above said last sum, the sum of twelve thousand three hundred and sixty-six dollars and sixty-seven cents ($12,366 67) has been paid over by your orator to, and distributed among the said heirs and devisees, on account of the original investment in said lands, and the payment of taxes and expenses by their ancestor aforesaid, or themselves, or some of them. Leaving at the present time in the hands of your orator, and subject to such payment by way of appropriation or distribution as this court shall order and determine, a balance of moneys amounting to the sum of eighteen thousand four hundred eighty-eight dollars and 82 cents ($18,488 82.)

And your orator states and charges that the whole amount of the original investment, as well as the amount of all moneys advanced by the executors, heirs, or devisees of said Henry Seymour for taxes and expenses of said lands since the original investment or purchase of the same, has now been refunded to said heirs and devisees as representatives of their said ancestor by your orator from proceeds of sales so made as aforesaid, tho' your orator admits there may yet be a small balance of interest due and unpaid to the estate of said
22 Henry Seymour, or to his heirs and devisees, on account of said original investment and said expenses incurred by them in behalf of said lands, and paying taxes and expenses incident thereto, which last amount or small balance of interest, (if any,) when ascertained, your orator, as administrator of said Price, admits

will justly be chargeable against and payable out of proceeds of sales to come in, before arriving at and adjusting the profits on the said investment in lands as aforesaid.

Nevertheless your orator states, and avers, and claims that of the last named sum of eighteen thousand four hundred and eighty-eight dollars and eighty-two cents, by far the greater part, and nearly all thereof is, and properly belongs to the account of clear profits derived from the investment aforesaid.

And your orator as such administrator of said Jeremiah Price, deceased, insists and claims that as such administrator he is justly entitled to an equal share in all the clear proceeds of sales of said lands after ascertaining and paying the aforesaid balance of interest last mentioned, (if any there shall be,) which share or half is to be had, received, and held by him as part and parcel of the personal estate of said Jeremiah Price to be administered by your orator.

23 And your orator has been at all times ready on the part of said estate of said Price, deceased, to agree upon and define the relative rights and interests of said estates in reference to said lands, and the division of profits made, or to be made, between them, and to agree upon the mode of making sales, adjusting, dividing, and paying over the profits aforesaid, and is now ready to do the same. But in consequence of the number of the parties interested, the distance of their residence from the subject-matter in controversy, the death of the original parties, and the intervention of descent, marriage and trusteeship, your orator has been, and still is, unable to adjust the matters and things which are open and undecided between the parties on any well defined equitable principles applicable to the case. And in addition thereto your orator has in a friendly way applied to said executors of said Henry Seymour, and said heirs and devisees, or some of them, on sundry occasions, and endeavored to arrange said matters in a friendly way equitably and justly to both parties, but in a way nevertheless such as should secure to the estate of said Jeremiah Price, deceased, a full share or equal half of the clear profits aforesaid according to the express terms of the original agree-

24 ment between the said Henry Seymour and the said Jeremiah Price in their respective lifetimes, and substantially as the same is above and herein stated and set forth; and your orator has, on such occasions, and in response to his said efforts as administrator in behalf of said estate of said Price, been met by a denial or refusal to admit, concede, and allow the rights of said Price's estate to said half of the profits aforesaid on the investment aforesaid, and your orator has reason to fear, and does fear, that in case the residue of the lands aforesaid should be sold out, and the whole proceeds converted into money, including the moneys due on sales already made or to become due, and the same with the moneys now in hand should be suffered to go into the hands of, and be paid over to the numerous heirs and devisees of said Henry Seymour, or his executors and trustee aforesaid beyond the limits, and without the jurisdiction of the courts of this State, where the whole business has been transacted and the said profits earned and made, that then and in such case the rights

and interests of the estate of said Jeremiah Price, deceased, in said profits on the investment aforesaid would be so effectually used up, dissipated, placed beyond and out of reach and lost as to be
25 hardly, if at all, worth pursuing or asserting; on all which accounts the interposition of a court of equity to ascertain, adjust, and declare the rights of the respective parties in the premises has become indispensable.

To the end, therefore, that the said Epaphro Seymour, Horatio Seymour, and Origen S. Seymour, as executors of Henry Seymour, deceased, and the said Horatio Seymour, John F. Seymour, Rutger B. Miller, and Mary F., his wife, and Edmund A. Wetmore, her trustee, Edward F. Shonnard, and Sophia A., his wife, Ledyard Lincklaen, and Helen C., his wife, and Roscoe Conkling, and Julia C., his wife, the heirs and devisees aforesaid, may be required to answer all and singular the premises (but without oath, and their and each of their oath thereto is hereby expressly waived) as fully and particularly as if the same were here distinctly repeated, and they and each of them particularly interrogated thereto.

And that this honorable court may cause all the accounts existing between the parties in respect to the lands aforesaid, the original costs, and all expenses thereof, and interest account, and account of sales, to be submitted to and passed upon and reported by a master in chancery duly appointed, and that on the coming in
26 and confirmation of such report, and on the payment from the proceeds of sales of any balance of interest, or otherwise, that may be found due to said heirs and devisees, if any, your orator, as administrator of said Price, may be declared to be entitled to retain, as such administrator, in his hands, to be administered one equal half of the clear proceeds of all sales made heretofore or hereafter to be made, (after return of the original investment and interest according to the conditions stipulated and agreed upon by said original instrument in writing, between the said Henry Seymour and the said Jeremiah Price, in their lifetime respectively,) and that the court may order and decree the unsold portion of said lands and premises to be sold under its direction, and to that end that this honorable court may make such order and decree as may be agreeable to equity touching and concerning the person, agent, or receiver who shall in future conduct said sales and have the custody and collection of all moneys due or to become due on sales made hitherto, or to be made hereafter, until the whole be disposed of, as well as to see to and pay taxes and other disbursements and expenses, and have the care and oversight of the lands ad interim, unless the parties themselves shall agree upon the same in such manner and on such terms as
27 shall be ratified and confirmed by the court. And to the end also that an injunction be issued out of and under the seal of this court, directed to the persons above named as executors, heirs, and devisees of said Henry Seymour, and to said trustee of Mary F. Miller, their solicitors, counsel, attorneys, and agents, strictly enjoining and commanding and forbidding them, under an adequate penalty, from making or contracting any further sales of the lands and prem-

ises aforesaid, or withdrawing from your orator any further amount of moneys derived from sales, unless it be for some ascertained balance due them for interest or otherwise, which the court may allow and order, or from so in any other manner acting or doing in the premises as to interfere with or prevent the full exercise of the jurisdiction of this court in adjusting and settling the rights in equity of all the parties in this suit, touching and concerning all the matters in controversy, and until the court shall otherwise order and decree. And that your orator may have such further relief or such other relief in the premises as the nature of the case may require, and may be agreeable to equity and good conscience.

28 May it please your honor, the premises considered, to grant to your orator the writ of injunction aforesaid, directed to the several defendants aforesaid by name, and to their solicitors, attorneys, counsel, and agents, and every of them, commanding, enjoining, and forbidding as above prayed and suggested in substance. And also to grant unto your orator a writ of summons, to be directed to the above-named defendants, Epaphro Seymour, Horatio Seymour, and Origen S. Seymour, as executors of the last will and testament of Henry Seymour, deceased, and to the said Horatio Seymour, John F. Seymour, Rutger B. Miller, and Mary F. Miller, his wife, and Edmund A. Wetmore, her trustee, Edward F. Shonnard, and Sophia F., his wife, Ledyard Lincklaen, and Helen C., his wife, and Roscoe Conckling, and Julia C., his wife, to be and appear before this honorable court on a day therein to be named, then and there to answer unto all and singular the premises, and to stand to, abide by, perform, and observe such order and decree as this honorable court may make in the premises, and shall be agreeable to equity and good conscience.

And your orator will ever pray, &c.

JOHN HIGH, JR.,
Administrator of Jeremiah Price, dec'd.

MATHER & TAFT,
Solicitors for John High, jr., Administrator of Jeremiah Price, deceased.

29 STATE OF ILLINOIS, *Cook County, ss:*

On this 3d day of February, A. D. 1857, personally appeared before the undersigned John High, jr., complainant in the foregoing bill of complaint, signed by him as surviving administrator of Jeremiah Price, late of Chicago, in said county, deceased, who, being by me duly sworn, made oath and said, that he had heard said bill read and knew the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated on his information and belief, (being matters and things done and transacted by another or others than himself,) and as to those matters, he has made careful and diligent examination and inquiry, and believed the same to be true.

WALTER KIMBALL,
Clerk of Cook County Court of Com. Pleas.

Oyer of letters of administration to John High, jr., and Phebe Meeker, referred to in the foregoing bill.

STATE OF ILLINOIS, *Cook County, ss:*

The people of the State of Illinois to all to whom these presents shall come, greeting:

Know ye, that whereas Jeremiah Price, of the county of Cook and State of Illinois, died intestate, as it is said, on or about the 13th
30 day of July, A. D. 1854, having at the time of his decease personal property in this State which may be lost, destroyed, or diminished in value. To the end, therefore, that said property be collected and preserved for those who shall appear to have a legal right or interest therein, we do hereby appoint Phebe Meeker and John High, jr., of the county of Cook and State of Illinois, administrators of all and singular the goods and chattels, rights and credits, which were of the said Jeremiah Price at the time of his decease, with full power and authority to secure and collect said property and debts wheresoever the same may be found in this State and in general to do and perform all other acts which now are or hereafter may be required of them by law.

Witness Charles B. Farwell, clerk of the county court in and for said county of Cook, and the seal thereof, this 15th day of July, A. D. 1854.

[L. S.]

C. B. FARWELL,
Clerk of the County Court.

Copy of nuncupative will referred in the annexed bill.

We, the undersigned, do hereby declare that we were present during the last sickness of Jeremiah Price, deceased, late of the city of Chicago, and State of Illinois, and that during said last sickness, and on the thirteenth day of July, eighteen hundred and fifty-
31 four, in the city of Chicago aforesaid, they heard said Jeremiah Price declare that he gave and wished paid the American Bible Society the sum of one thousand dollars; to the American Tract Society the sum of one thousand dollars; to the American Sunday School Union one thousand dollars; to the American Board of Commissioners for Foreign Missions one thousand dollars. And the said Jeremiah Price in his last sickness aforesaid declared to us, the undersigned, that he made the bequests aforesaid, and called our notice to such devise and bequests, and that he made the same.

And we do further declare that at the time of the making of such bequests he, the said Jeremiah Price, we fully believe to have been of sound mind and memory. And we further declare that we were both present together when he made such bequests, and heard the words aforesaid by him uttered and spoken in regard to such bequests, and we have caused the same to be reduced to writing as literally as we can remember the same.

In witness whereof we have hereunto set our hands, this 20th day of July, A. D. 1854.

WILLIAM PRICE.
JOSEPH MEEKER.

Sworn to and subscribed before me, this 21st day of July, A. D. 1854, on the part of Joseph Meeker.

C. B. FARWELL,
Clerk of the County Court of Cook Co., Ills.

The reduction of the same to writing and signatures of Wm. Price and Joseph Meeker sworn to by Grant Goodrich and Henry E. Seely, on the 9th day of August, 1854, before—

C. B. FARWELL, *Clerk, &c.*

Filed July 21, 1854; proven 15th Aug., 1854; recorded on page 131.

32 *Exhibit B, referred to in the bill.*

Date of purchase.	Account of lands purchased, quantity, and prices paid.	Acres.	Amount.
1835.			
June 15.	Bought of Joseph Lafrombois an undivided half of 40 acres, known as the north half of the east half of the southwest qr. of section 12, in town. No. 39 north, 13 east, at $12 50 per acre	20	$250 00
June 15	Bought of John B. Robbie an undivided half of 40 acres, known as the north half of the west half of the southeast qr. of section 12 in town. 39 north, 13 east, at $12 50 per acre	20	250 00
June 17	Paid one-half the recording the above deeds, at 12 p c. each		1 50
June 19	Bought of the United States at Chicago public land sale, the west half of the N. E. qr. of sec. 24, in town. 34 N., 8 E., at $10	80	100 00
June 19	The west half of the S. W. qr. of sec 22, in town. 34 N., 8 E., at $2 15	80	172 00
June 19	Bought of P. C. Latham the west half of the N. E qr. of sec. 20, in town. 34 N., 8 E, at $1 80, the certificate is in H. Seymour's name.	80	144 00
June 19	At public sale the south fraction of the N. E. qr. 32 town. 34 N, 8 E, at 10	5.07	6 34
June 22	Do. the west half of the S. E. qr. of sec 30 in town 36 N, 9 E, at $1 50	80	120 00
June 22	Do. the east half of the S E. qr. of sec. 30, in town. 36 N., 10 E, at $1 55	80	124 00
June 22	Do. the east half of the S. E. qr. of sec. 34, in town 35 N., 10 E., at $1 55	80	124 00
June 22	Do. the west half of the S. E. qr. of sec. 34, in town 35 N, 10 E, at $1 95	80	156 00
June 22	Do. the S E qr. of sec 36, in town. 35 N., 10 E., at 10	160	200 00
June 24	Bought of Henry Headly by a transfer of the certificate, so the patent issues in H. Seymour's name, the S. W. qr. of sec. 2, in town. 37 N., 11 E., at $2 50	160	400 00
June 26	At public sale the west half of the N. W. qr. of sec 2 in town. 32 N., 13 E., at $1 95	79.69	153 44
June 26	Do. the west half of the N. E. qr. of sec. 22, in town 39 N, 13 E, at $2 05	80	164 00

33 *Exhibit B.*—Continued.

Date of purchase.	Account of lands purchased, quantity, and prices paid.	Acres.	Amount.
1835.			
June 26	The west half of the N. W. qr. of sec. 2, in town. 3 N., 13 E., at $10.	78	$97 50
June 26	Do. the east half of the S. W. qr. of sec. 36, in town. 39 N., 13 E , at $2 90.	80	232 00
June 30	Bought of Doct. Wm. B. Egan of Chicago, the west half of S. E. qr. of sec. 28, in town. 39 N., 13 E., for which he made a transfer, so the patent issues in H. Seymour's name, the certificate I have yet, it isdated June 26, 1835, paid three dollars per acre.	80	240 00
June 27	At public sale the west half of the S. E. qr. of sec. 33, in town. 38 N., 14 E , at 10.	80	100 00
June 27	Do. the west half of the S. W. qr. of sec. 32, in town. 41 N., 14 E , at $1 90	80	152 00
June 27	Do. the east half of the N. W. qr. of sec. 22, in town 38 N., 14 E , at $1 80	80	144 00
	Amount carried over	156. 76	3,330 78
	Amount brought up.	156. 76	3,330 78
June 27	Bought of the United States at the public sale at Chicago, the east half of the S. W. qr. of sec. 22 in town. 38 N., 14 E., at $1 45.	80	116 00
June 27	Do. the east half of the S. W. qr. of sec. 6, in town. 38 N., 14 E , at $3 05	80	244 24
June 27	Do the west half of the N. W. qr. of sec. 32, in town. 41 N., 14 E , at 16	80	160 00
August 6	Entered at Chicago the east half of the S. W. qr. of 29, in town 33 8, at 10	80	100 00
August 6	Entered the east half of the S. W. qr. of sec. 22, in town. 39 N., 13 E	80	100 00
August 6	Entered the east half of the S. E. qr. of sec. 14 in town. 38 N., 12 E.	80	100 00
August 6	Entered the east half of the S. E. qr. of sec. 4 in town. 38 N., 13 E	80	100 00
August 6	Entered the east half of the S. E. fractional qr. 32 in town. 34 N., 8 E.	76. 96	96 20
August 10	Entered the east half of the N. E and W. half of the S. W. of sec. 18, in town. 38 N , 13 E.	161 06	201 32
Sept. 28	Paid for a map of the lands for $12 sent to H. Seymour		12 00
Oct. 21	Bought of Benjamin Harris lots 4 and 8 in block 11, in the original town of Joliett, for $200, the deed is recorded in Cook county		200 00
	Paid recording same, 12		1 50
Oct. 27	Bought of John Periam lots 4 and 5 in block 80 in the school section part of the town of Joliett, at $50 each, the deed is recorded in the county of Cook		100 00
	Paid for the same, 12.		1 50
Oct. 28	Entered at Chicago, the west ½ of the N. W. qr. of sec. 30 in town. 38 N., 13 E.	80 44	100 55
Oct. 28	Bought a map, A. Joliet, for H. Seymour, paid 16.		2 00
1836.			
March 8	Bought of Francis I. Blanchard, lot 14, in block 31 in the school section part of Joliet, for 25 dollars.		25 00
	Deed is recorded in Cook county, paid for same 10 p. c		1 25
		2,440 22	4,992 34

Exhibit C, referred to in bill.

Dates.	Account of payments on ac. of H. Seymour.	Amount.
1837.		
March 4	Paid taxes on 5 lots in Joliett, $2 94, for taxes of 1836	$2 94
Dec. 14	Paid taxes on the 5 lots in Joliett for the year 1837, $5 95	5 95
1838.		
Dec. 12	Paid Joliett taxes for the year 1838, on 5 lots, $5 20	5 20
Dec. 1839.	Paid Joliett corporation, county, and State tax for 1839, taxes on 5 lots, $4 74; proportion of travelling expenses, 50 cts	5 24
	Paid Joliet school tax for 1840, on lots 4 and 8, block 11, $1 27; paid Joliett corporation tax for 1840, on 5 lots; $1 31; expenses in payment of same, 50 cts	3 08
	Paid Joliett State and county tax for 1840, on 5 lots, $1 47	1 47
	Paid county and State tax on 5 Joliett lots for 1841, $3 84	3 84
	Paid county and State and road tax in Grundy county for 1841, $8 42	8 42
	Paid county and State and special tax in Cook county for 1841, $44 47	44 47
	Paid county and State tax in Dupage county for 1841, $5 12	5 12
1842.		
Jan'y 11	Paid county and State tax on lands in Will county for 1841, $12 80	12 80
	To travelling, &c., expenses of paying all taxes of 1841, $3 50; being the amount paid	3 50
1843.		
Jan'y 23	To Dupage State and county tax for 1842, $4 48; reduction of State tax paid back, 84 cts	3 64
March 14	To State, county, and special tax for 1842, in Cook county	31 77
March 17	To Grundy State, county, and road tax of 1842, after reduction.	7 87
March 18	To Will county tax of 1842, $11 03	11 03
Dec. 13	To Grundy county tax of 1843, $7 23; postage, 3 single, 1 double, 50 cts	7 73
Dec. 14	To Cook county tax of 1843	29 36
Dec. 16	To Will county tax on 6.80 acres and 5 Joliett lots for 1843	14 02
	To Dupage county tax on 2.80 acres for 1843, $392; postage, 1 s.	4 05
1844.		
Dec. 14	To Dupage county tax of 1844 on 2.80 acres, $3 92; postage, 1 s.	4 05
Dec. 18	To Grundy county tax of 1844, $8 44; postage on same, 30 cts	8 74
Dec. 28	To Cook county tax of 1844 on undivided half of N. half of S. E. qr. of S. 12, T. 39, 13	91
Dec. 31	To Will county tax of 1844, on 6 80 acres and 5 Joliett lots	13 16
	To postage in paying the above, 20 cts	20
1845.		
March 11	To Cook county tax of 1844, $29 64; cost advertising same, $1 53; because funds not sent	31 17
March 14	To postage to Joliett to get tax sale cancelled, 80 acres sold after tax paid on 1843	30
April 14	To postage on letter with draft from Albany	25
Nov. 24	To Cook county tax of 1845, including 40 acres in my tax rec'pt	41 82
Dec. 2	To Will county tax of 1845 on 6.80 acres and 5 Joliett lots, $17 74; postage, 10 cts	17 84
Dec. 23	To postage on letter from Horatio Seymour, dated Dec 15th.	10
	To Dupage county tax of 1845 on 2 80 acres, $10 54; postage, 10 cts	10 64
Dec. 31	To Grundy county tax of 1845, $9 64; paid postage and agent 96 cts	10 60

Exhibit C.—Continued.

Dates.	Account of payments on ac. of H. Seymour.	Amount.
1846.		
July 4	To postage on letter from Horatio Seymour, of June 27th	$0 10
Nov. 23	To Dupage county tax of 1846	14 31
Dec. 9	To Will county tax of 1846, $21 50; postage and agent paid 50 cents	22 00
	To Grundy county tax of 1846, $10 92; expense of paying same, 90 cts	11 82
	To Cook county tax of 1846, including 40 acres on my rec'pt on sec. 12, T. 39, 13	55 81
1847.		
Feb. 22	To postage on letter from Horatio Seymour, dated Feb. 12th, 1847	10
Oct. 16	To half postage on letter from John Seymour, of 9th inst	05
Dec. 3.	To Cook county tax of 1847, including 40 acres in my tax receipt	42 45
	To Dupage county tax on 2 80 acres, for 1847	9 32
Dec. 11	To Will county tax of 1847	23 31
Dec. 30	To Grundy county tax of 1847	11 18
1848.		
April 27	To postage on letters from Horatio Seymour, with check	10
Nov. 22	To postage on letters from Horatio Seymour, with check	10
Nov. 10	To Cook county tax of 1848, with 40 acres on my tax receipt	55 61
Dec. 13	To Dupage county tax of 1848 on 160 acre-	7 86
Dec. 16	To Will county tax of 1848 on 5 Joliett lots and 6.80 acres	16 85
1849.		
Jan. 24	To Grundy county tax of 1848	11 28
Nov. 30	To Cook county tax of 1849, with 40 acres on my tax receipt	69 92
1850.		
Jan. 3	To Will county tax of 1849, on 6.80 acres and 5 town lots	18 74
Jan. 10	To Grundy county tax of 1849	18 11
Jan. 24	To postage on letter from H. Seymour, date 15th inst., with a check	10
	To Du Page county tax of 1849	6 91
1851.		
Jan. 27	To Du Page county tax of 1850, $5; premium on silver, 5 cts	5 05
March 19	To Will county tax of 1850, $26 96; to premium on silver, 27; postage, 20	27 43
March 22	To Grundy county tax of 1850, $19 28; expense on same, 60	19 88
March 29	To Cook county tax of 1850, in one receipt, $54 25; in my receipt, $6 12.	60 37
May 21	To 6 per cent. interest on $93 31, tax of 1850, due me from April 1 to date	84
	To postage of letter with draft, dated May 17, '51	10
1852.		
March 9	To Grundy co. tax of 1851, $20 63; expense of paying same, 60 cts	21 23
March 24	To Dupage county tax of 1851, $5 04; expense, 9 cts	5 13
March 23	To Will county tax 1851, for side walks, $13 50; other taxes, $20 40 = $63 90; pd. for specie funds, 64 cts; expense, 1s	64 66
March 31	To Cook co. tax of 1851, $31 42; pd. State tax in specie, cost 34 cts	81 76
1853.		
Jan'y 8	To drain'e tax, S. half of W. half of S.E. qr. of sec. 33, T. 38, 14, Cook co	25 00
March 24	To Dupage co. tax of 1852, on S.W. qr. of sec. 2, T. 37, 11, $6 18; expense 2	6 43
March 23	To Grundy co. tax of 1852, $20 27; expense paid, 8s	21 27
March 29	To Will county tax of 1852, $18 62; expense 2s	18 87

No 83. Abraham Seymour & others
v Peter Adm & Price
=
Stevens v Depeter 24 Ill. 483
24 How. Partition suit & proper in principal matter pertaining
Suit in Common Pleas Peoria County Ill. removed
into Circuit Court U.S. Dist of Illinois
=
Object to establish rights of respondents & Peter
Price & about 2440 acres Illinois
purchased & conveyed to Abraham Seymour
in 1835
=
Contracts under which controversy arises
made 9th May 1835
=
Bill for sale entered in May 1840.
=
Sale not made in time by Circuit Court
parties notified thereby

Exhibit C.—Continued.

Dates.	Account of payments on ac. of H. Seymour.	Amount.
1853.		
April 19	To Cook county tax of 1852, $113 14	$113 14
	To ¾ per cent. paid for specie on $84, in 3 above counties	63
June 1	To drain'e tax on 2.80 ac. lots in Cook co., E. half S. W. sec. 22 and W. half of S. E. of 20 T 39 13; $100 12 each	200 24
July 21	To 7 per cent. interest on $200 24 for 1 month 21 days	2 03
Nov. 20	To State, county, and city, and other tax of 1853—on Joliett lots, $4 48; cost 10	4 58
1854.		
March 30	To Grundy co. tax of 1853, $16 21; expense, 8s.; specie, 21 cts	17 41
April 9	To Cook co. tax of 1853, $241 54; for specie on half, $1 21	242 75
April 8	To drain'e tax on E. half of S.W. qr. of sec. 6, town. 38,14, Cook county	154 00
	To Dupage co. tax of 1853, $4 66; expense, 40 cts	5 06
April 3	To Will co. tax of 1853, on land, $21 40; expense 1	21 52
April 24	To drain'e tax on E. half N. W. qr. sec. 22, town. 38,14	122 00
May 27	To drain'e tax on W. half N. E. sec. 22, T. 39,13	66 20
June 16	To 6 per cent. interest on $66 70, two-thirds of month omitted.	22
	Total sum paid by J. Price in his lifetime, including $4,992 34 pd. for lands	$7,047 23

Accounts of payments of taxes and expenditures on the premises, made since the decease of Jeremiah Price, by John High, jr, agent therefor, under employment in behalf of H. Seymour's heirs and devisees.

Date.	Account of payments on ac. H. Seymour.	Account.
1854.		
Dec. 11	Cash paid drain'e tax on E. half S. W. qr. sec. 6, T. 38,14	$129 20
1855.		
Jan'y 18	Cash pd. State, co., and town tax, Will county	28 77
	Cash pd. city tax in Joliett for year 1854	2 69
	Paid for specie in paying Will co. tax above	63
38 1855.		
Jan'y 26	Paid State, co., and town tax, Du Page, on SW. ¼ sec. 32, T. 37, 11	4 82
	Commissions on do, 50 cts	50
	For specie on same	11
Jan'y 2	Paid taxes in Grundy county for year 1854, $23 07; specie 40 c	20 47
April 6	Paid taxes 1854, tax on lands in Cook county, $233 09, specie $2 22	235 31
1856.		
March 14	Cash p'd taxes of 1856 on Du Page co., S.W. ¼ sec. 2, T. 37, 11, $8 56, specie 9	8 65
March 21	Paid Will co tax for 1855, $59 56, specie 60	60 16
March	Paid taxes on lots in Joliett for 1855, and specie	4 98
March	Paid Grundy co. tax for 1855, $29 36, specie 29 c	29 65
March 29	Paid Cook co. tax for 1855, $379 73, specie $2 85	382 58
May 17	Paid for redemption of lot 4, bl. 11, in Joliett, sold for sp. ass'es't	7 22
1854.		
Dec. 11	J. High, jr., commissions 5 p'r cent. on drainage tax of $129 20.	6 46

Exhibit C.—Continued.

Date.	Account of payments on ac. H. Seymour.	Amount.
1855.		
Jan'y 18	10 per cent commissions on paying Will co. tax of $31 46, and 63 cts	$3 20
Jan'y 26	Paid for 11 postage stamps in paying taxes, and 11 ots. specie on Du Page tax	44
	10 per cent. commissions on paying Du Page co. tax	53
	10 per cent. comm's on Grundy co. tax of $20 07	2 00
1855.		
April 6	5 per cent. comm's on paying Cook co. tax of 1854, $233 09	11 65
May 26	Paid for 10 letters stamps	30
July 20	Paid 17 letters stamps	51
July 24	Cash paid Matthewson & Gooding for report on Will co. land	7 38
Oct. 30	Paid for 12 letter stamps	36
Dec. 22	To 2½ p'r ct. comm's on sale to Jno. Wentworth, 80 a., at $40 per acre	80 00
	To cash paid recording Wentworth mortgage	1 50
1856.		
Feb'y 7	To 20 letter stamps	60
Feb'y 28	P'd R. L. & C. L. Wilson, advertising chancery notice in suit Partition between the estate of Seymour and that of Price	50 00
March 14	10 per cent. commissions on Du Page tax of 1855, $8 56	85
39) 1856.		
March 14	10 per cent. on paying Will co. and Grundy co. and Joliett taxes for 1865	9 38
March 31	2½ per cent commissions on 80 acres, at $225 p'r a., to Jno. W. Davis	450 00
March 29	5 p'r ct. comm'ns paying tax of 1855 in Cook co., $379 73	18 99
March 31	Paid for letter stamps	1 77
1856.		
April 15	2½ p'r ct. comm's on $48,000 sale to Parsons & Davis	1,200 00
	Paid $3 expenses to sec'y state exemplifications	3 00
May 17	Paid postage stamps	60
July 3	Paid Wiggins, Meech & Coventry, law bill in partition	231 08
1857.		
Jan'y 3	Paid Wiggins & Coventry, legal services	125 00
Jan'y 6	City and State taxes paid in Will co. for 1856	106 70
	Commissions thereon, and each prem. p'd for specie	11 76
	Am't of pay'ts, disbursements, expenses, and charges by John High, jr	3,239 80
	Am't by Jeremiah Price bro't down	7,047 20
	Total cost of land taxes and expenses p'd, incl'g expense of sales thus far	10,287 03

Exhibit D, referred to in the bill.

Account of receipts by Jeremiah Price from H. Seymour of original purchase money and other money for taxes, &c., from other sources.

Dates.	Acccounts of receipts, &c.	Amount.
1835.		
May 9	Rec'd at Syracuse, N. Y., cash and check on Rochester Bank amounting to $5,000, for which H. Seymour has J. Price's re'pt indorsed upon original contract between them, as to investment, &c., as p'r bill	$5,000 00

Exhibit D.—Continued.

Dates.	Account of receipts, &c.	Amount.
1841.		
Dec. 24	By check on Oneida Bank this day received by mail from Horatio Seymour to pay taxes for which s'd Price sent by return his re'pt	$91 00
Dec. 30	By premium in exchanging funds for taxes	6 25
1843.		
Feb'y 20	By certified check received this day from Horatio Seymour, dated Feb. 10, 1843, on Oneida Bank, to my order for taxes; r'c'pt returned	80 00
Dec. 13	By draft from Oneida Bank on N. Y. State Bank, of date Nov. 29, 1843, to pay taxes of 1843; acknowledged rep't Dec. 15th.	32 00
1845.		
April 14	By certified check on Mech. & Far. B'k, Albany, dated April 3d, 1845; rcp't returned therefor	100 00
Dec. 26	By check of Horatio Seymour on Oneida Bank, dated Utica, Dec. 15, 1845, pay'ble to order J. Price; r'cp't returned by mail	20 00
1847.		
Feb. 22	By Horatio Seymour's check on Oneida B'k of Feb. 12, 1847	121 41
1848.		
April 27	By check of do. on same b'k, April 18, 1848, to order of J. Price, r'c'pt	83 41
Nov. 22	By check from H. Seymour of Nov. 13, 1848, on same b'k, to order J. P., r'c'pt	96 00
	By part of a road tax refunded	3 40
1850.		
Jan. 24	By check from H. Seymour on same b'k of Jan'y 15, 1850	100 00
July 19	By cash from John Nichola Shaffer for 12 cords wood cut, as he says, by mistake, on Seymour's land	12 00
Dec. 16	By cash from do. by like mistake on land in town. 41, 14, 13½ cords	13 50
1851.		
May 21	By check from Horatio Seymour on Oneida B'k of May 17, '51	93 31
1852.		
June 25	By check from Horatio Seymour on same bank of June 23, '52, r'c'pt'd	173 82
1853.		
May 30	By Jno. F. Seymour's check on same b'k of May 26, '53, r'c'pt'd	185 34
July 21	By Jno. F. Seymour's check of 19th inst. on Oneida B'k	200 24
1854.		
April 19	By John F. Seymour's check, date April 17, '54	447 35
April 29	By John F. Seymour's check on do. b'k, date Ap'l 27th	122 00
June 16	By Horatio Seymour's check on Oneida B'k of June 11	66 20
	Total receipts by Jeremiah Price on ac. of lands	7,047 23

This ac. is continued by John High, jr., agent, on next page.

Ac of money received from heirs and devisees of Henry Seymour, deceased, (after his decease and after decease of Jeremiah Price,) by John High, jr., as agent for heirs and devisees, to pay taxes and other expenses on lands aforesaid.

Dates.	Account of receipts, &c.	Amount.
1854.		
Dec 4	By check rec'd from N. Y. State on Oneida Bank	$129 20
1855.		
March 8	By check on Oneida Bank	70 03

Exhibit D.—Continued.

Dates.	Account of receipts, &c.	Amount.
April 9	By check on Oneida Bank	$246 96
May 23	By grass sold off of land	5 00
July 17	By grass sold off of land	1 00
1856.		
April 14	By grass sold off of land	10 00
	By exchange rec'd of Jno. W. Davis as funds	25 00
Sept. 4	Grass sold	10 00
	Total am't of r'c'pts by John High, jr., to charge in land ac.	497 19
	Add thereto Jeremiah Price's r'c'pts	7,047 23
	Total r'c'pts from Seymour and estate and land itself, other than sale	7,544 42

The two acts compared.

Total cost of land taxes and expenses paid, including expenses of sales thus far	$10,287 03
Deduct r'c'pts by Price and High, jr., on ac. of land, excl. of sales	7,544 42
This am't paid from proceeds of sales as expenses	2,742 61
Whole am't of cash as yet rec'd from sales	33,598 10
Deduct last above balance	2,742 61
Net proceeds of sales rec'd thus far	30,855 49
Am't paid over by John High, jr., to Seymour's heirs and devisees from sales.	12,366 67
Leaving a balance in the hands of Jno. High, jr, of	18,488 82

42 *Account of sales made by John High, jr., as agent for estate, heirs and devisees of Henry Seymour, deceased, from lands purchased by Jeremiah Price, dec'd:*

Oct. 22, 1855:

Sold to John Wentworth E. ½ of N. E. ¼ sec. 18: 38: 13, 80 acres at $40 per acre. Am't $3,200, cash paid down	$640 00
Due 22d Oct., 1856, princ. $640, interest $153 60	793 60
Due 22d Oct., 1857, princ. 640, interest 115 20	755 20
Due 22d Oct., 1858, princ. 640, interest 76 80	716 80
Due 22d Oct., 1859, princ. 640, interest 38 40	678 40
Whole am't, princ. and interest	3,584 00
Sold to John W. Davis, Providence, R. I., E. ½ S. W. ¼, sec. 36: 39: 13, 80 acres, at $225 per acre. Am't $18,000, cash paid down	$2,250 00
Due 1 Oct., 1856, princ. $2,250, int. $103 50	2,353 50
Due 24 Dec., 1856, princ. 3,375, int. 810 00	4,185 00
Due 24 Dec., 1857, princ. 3,375, int. 607 50	3,982 50
Due 24 Dec., 1858, princ. 3,375, int. 495 00	3,780 00
Due 24 Dec., 1859, princ. 3,375, int. 202 50	3,577 50
Whole am't, princ. and interest	20,128 50

43 Jan'y 25, 1856:

Sold to John W. Davis Providence, R. I., und. ⅓ und. ½ of N. ½ of S. E. ¼, sec. 12, 39, 13, for $16,000, cash paid down		$2,000 00
Due on 1st Sept, 1856, princ. $2,000, interest	$72	2,072 00
Due 25 Jan'y, 1857, princ. 3,000, interest	720	3,720 00
Due 25 Jan'y, 1858, princ. 3,000, interest	540	3,540 00
Due 25 Jan'y, 1859, princ. 3,000, interest	360	2,360 00
Due 25 Jan'y, 1860, princ. 3,000, interest	180	3,180 00
Whole amount, princ. and interest		17,872 00

Jan'y 25, 1856:

Sold to Usher parsons, Providence, R. I., und. ⅔ of und. ½ of N. ½ S. E. ¼ Sec. 12, 39, 13, for $32,000.		
Cash paid down		$4,000 00
Due 1 Sept., 1856, $4,000 princ., int.	$144	4,144 00
Due 25 Jan'y, 1857, 6,000 princ., int.	1,440	7,440 00
Due 25 Jan'y, 1858, 6,000 princ., int.	1,080	7,080 00
Due 25 Jan'y, 1859, 6,000 princ., int.	720	6,720 00
Due 25 Jan'y, 1860, 6,000 princ., int.	360	6,360 00
Whole am't, princ. and interest		35,744 00

RECAPITULATION.

Dates.		Am't purch.	Down pay'ts.
	Sale to Jno. Wentworth	$3,200 00	$640 00
	Sale to Jno. W. Davis	18,000 00	2,250 00
	Sale to same purchaser	16,000 00	2,000 00
	Sale to Usher Parsons	32,000 00	4,000 00
	Totals	69,200 00	8,890 00
	Payments made since the sales:		
	Pay't by Davis, J. W., due 1 Sept. 1856		2,072 00
	Pay't by U. Parsons, due same time		4,144 00
			15,106 00
44	Total amount of sales thus far, $69,200. Total cash rec'd thus far, $15,106.		
1856			
Oct. 1	Part of 2d pay't on contract by J W. Davis on E. ½ S W. ¼ Sec. 36, 39, 13, paid this day.	1,176 75	2,353 50
Oct. 6	Bal. of same 2d pay't paid this day	1,176 75	
Oct. 23	Pay't on E ½ N. W. ¼ S. 18, 38, 13, being cash of Jno. Wentworth as payment thereon		793 60
Dec. 24	Paid by J. W. Davis ½ 3d pay't on E. ½ S. W. ¼ S. 36, 39, 13		2,092 50
1857			
Jan'y 6	Daid by H. W. Peyton the other ½ of same instalment		2,092 50
Jan'y 24	Cash of U. Parsons on ⅔ und. ½ N. ½ S. E. ¼ S. 12, 39, 13		7,440 00
Jan'y 29	Cash of J. W. Davis for ⅓ same		3,720 00
	Total amount of cash rec'pts on sales		33,598 10

45 *Copy of original contract.—Exhibit A.*

This agreement, made the 9th day of May, 1835, between Jeremiah Price, of Chicago, and Henry Seymour, of Utica, witnesseth: That the said Jeremiah covenants and agrees that he will forthwith devote his time and attention and exercise his best judgment in exploring and purchasing land, to an amount not exceeding five thousand dollars, in the States of Illinois, Indiana, and Ohio, and in the Territories of Michigan and Wisconsin, or in such of them as he may find most advantageous to the interest of said Henry, in whose name the contracts and conveyances shall be made and taken. It is understood that the purchases shall be made after full and careful searches and explorations for the most profitable investments on or near the sites or expectant sites of towns or places of business, and in general in tracts of ground of moderate extent; and the said Henry covenants, on his part, to furnish five thousand dollars for the above contemplated purchases, and that the lands purchased as aforesaid shall be sold within five years from the present time, and out of the profit which may be made by such purchase and sale, after charging to the investment the taxes and other charges, if any, together with seven per cent. interest on the investment and the charges last men-
46 tioned, there shall be paid to the said Jeremiah one half of the same, which one-half of the profit shall be in full of his services and expenses of every kind in making the aforesaid explorations, searches, and in doing all such other things as may be requisite and proper in making the contemplated purchases. It is understood shat the purchases shall be made during the present year, and that no payment for services or expenses will be made by said Henry, except from the profits made as aforesaid.

JEREMIAH PRICE.
HENRY SEYMOUR.

Left for record 17th Oct., 1837; recorded 24th Oct., 1837; Book V, Deeds, page 306, Cook county.

Indorsed: Filed Feb'y 3d, 1857

W. KIMBALL, *Clerk.*

And also filed July 6th, 1857.

WM. H. BRADLEY, *Cl'k.*

47 *Summons.*

STATE OF ILLINOIS, *County of Cook, ss:*

The people of the State of Illinois to the sheriff of said county, greeting:

We command you that you summon Epaphro Seymour, Horatio Seymour, and Origen S. Seymour, executors of the last will and testament of Henry Seymour, deceased, and the said Horatio Seymour, John F. Seymour, Rutger B. Miller and Mary F., his wife, and Edmund A. Wetmore, her trustee, Edmund F. Shonnard and Sophia F.,

his wife, Ledyard Linklaen and Helen C., his wife, and Roscoe Conckling and Julia C., his wife, heirs and devisees of said Henry Seymour, deceased, if they shall be found in your county, personally to be and appear before the Cook county court of common pleas for the county of Cook, on the first day of the next term thereof, to be holden at the court-house in the city of Chicago, in said county, on the first Monday of April next, to answer unto John High, jr., survivor of Phebe Meeker, and sole surviving administrator of, &c., of Jeremiah Price, deceased, in his certain bill of complaint filed in said court on the chancery side thereof. And have you then and there
48 this writ, with an indorsement thereon in what manner you shall have executed the same.

Witness Walter Kimball, clerk of our said court, and the seal thereof, at the city of Chicago aforesaid, this 3d day of February, A. D. 1857.

[SEAL.] WALTER KIMBALL, *Clerk.*

The within-named defendants not found in my county.

JOHN L. WILSON, *Sheriff.*

Indorsed: Filed April 21st, 1857.

W. KIMBALL, *Cl'k.*

Filed July 6th, 1857

WM. H. BRADLEY, *Cl'k.*

Affidavit of non-residence.

In the Cook county court of common pleas, in chancery.

JOHN HIGH, jr., survivor of PHEBE MEEKER, and sole surviving administrator of, &c., of Jeremiah Price, deceased, complainant,
vs.
EPAPHRO SEYMOUR, HORATIO SEYMOUR, and Origen S. Seymour, executors of the last will and testament of Henry Sey-
49 mour, deceased, and the said Horatio Seymour, John F. Seymour, Rutger B. Miller and Mary F., his wife, and Edmund A. Wetmore, her trustee, Edward F. Shonnard and Sophia F., his wife, Ledyard Linklaen and Helen C., his wife, and Roscoe Conkling and Julia C., his wife, heirs and devisees of said Henry Seymour, deceased.

STATE OF ILLINOIS, *Cook County, ss:*

John High, jr., surviving administrator as aforesaid, complainant in the above-entitled cause, being duly sworn, deposeth and says that all the defendants above named reside out of the State of Illinois; the said Epaphro Seymour in Vermont, the said Origen S. Seymour

in Connecticut, and the other defendants in the State of New York; and further deponent saith not.

JOHN HIGH, Jr'r.

Subscribed and sworn to Feb'y 3d, 1857, before me,
WALTER KIMBALL, *Clerk*.

Indorsed: Filed Feb'y 3d, 1857.
W. KIMBALL, *Clerk*.

Filed July 6th, 1857.
WM. H. BRADLEY, *Cl'k*.

50 *Publication notice.*

Cook county court of common pleas, April term, A. D. 1857.

STATE OF ILLINOIS, *Cook County, ss:*

JOHN HIGH, jun., survivor of PHEBE MEEKER, and sole surviving administrator, &c., of Jeremiah Price, deceased, complainant,

vs.

EPAPHRO SEYMOUR, HORATIO SEYMOUR, and Origen S. Seymour, executors of the last will and testament of Henry Seymour, deceased, and the said Horatio Seymour, John F. Seymour, Rutger B. Miller and Mary F., his wife, and Edmund A. Wetmore, her trustee, Edward F. Shonnard and Sophia F., his wife, Ledyard Linklaen and Helen C., his wife, and Roscoe Conkling and Julia C., his wife, heirs and devisees of said Henry Seymour, deceased, defendants. } In chancery.

Affidavit of the non-residence of all the defendants above named having been filed in the office of clerk of said Cook county court of common pleas, notice is hereby given to said Epaphro Seymour, Horatio Seymour, and Origen S. Seymour, executors of the last will
51 and testament of Henry Seymour, deceased, and the said Horatio Seymour, John F. Seymour, Rutger B. Miller and Mary F., his wife, and Edmund A. Wetmore, her trustee, Edward F. Shonnard and Sophia F., his wife, Ledyard Linklaen and Helen C., his wife, and Roscoe Conkling and Julia C., his wife, heirs and devisees of said Henry Seymour, deceased, defendants, that John High, jun., survivor of Phebe Meeker, and sole surviving administrator of, &c., of Jeremiah Price, deceased, filed his bill of complaint in said court on the chancery side thereof on the third of February, 1857, and that a summons thereupon issued out of said court against said defendants returnable on the first Monday of April next, (1857,) as is by law required. Now, unless you, the said Epaphro Seymour, Horatio Seymour, and Origen S. Seymour, executors of the last will and testa-

ment of Henry Seymour, deceased, and the said Horatio Seymour, John F. Seymour, Rutger B. Miller and Mary F., his wife, and Edmund A. Wetmore, her trustee, Edward F. Shonnard and Sophia F., his wife, Ledyard Linklaen and Helen C., his wife, and Roscoe Conkling and Julia C., his wife, heirs and devisees of said Henry Seymour, deceased, shall personally be and appear before said
52 Cook county court of common pleas of Cook county, on the first day of the next term thereof, to be holden at Chicago, in said county, on the first Monday of April, 1857, and plead, answer, or demur to the said complainants' bill of complaint, the same and the matters and things therein charged and stated will be taken as confessed, and a decree entered against you according to the prayer of said bill.

WALTER KIMBALL, *Clerk.*
MATHER, TAFT & KING, *Compl's Sol's.*

Dated at Chicago, February 3d, 1857.

We, the undersigned, publishers of the Chicago Tribune, do hereby certify that a notice, of which the annexed is a true copy, was published four consecutive weeks next after the fifth day of February, 1857, in the d'ly edition of the Chicago Tribune, a newspaper published in and of general circulation throughout the county of Cook, State of Illinois.

Chicago, Illinois, May 15, 1857.

RAY, MEDILL & Co., *Publishers.*

Indorsed: Filed 20th June, 1857.

W. KIMBALL, *Clerk.*

Filed July 6th, 1867.

W. H. BRADLEY, *Cl'k.*

53 *Appearance and Motion.*

In Cook county court of common pleas, in chancery.

ORIGEN S. SEYMOUR, HORATIO SEYMOUR, JOHN F. Seymour, Rutger B. Miller, Mary F. Miller, Edmund A. Wetmore, trustee, &c., Edward F. Shonnard, Sophia A. Shonnard, Ledyard Linklaen, Helen C. Linklaen, Roscoe Conkling, and Julia C. Conkling, executors and heirs-at-law and legal representatives of Henry Seymour, deceased,

als.

JOHN HIGH, jr., administrator of estate of Jeremiah Price, deceased.

And now come the said defendants, by A. C. Coventry, their solicitor, and enter their appearance in the above-entitled cause, and

file their petition to said cause, and move the court for a removal of said cause to circuit court of the United States for the northern district of Illinois.

Chicago, June 20th, 1857.

A. C. COVENTRY, *Sol. for Def'ts.*

54 Indorsed: Filed 20 June, 1857.

W. KIMBALL, *Cl'k.*

Filed July 6th, 1857.

WM. H. BRADLEY, *Cl'k.*

Bond.

Know all men by these presents, that I, Alexander C. Coventry, of the city of Chicago, in the county of Cook and State of Illinois, am held and firmly bound, unto John High, jr., of said city of Chicago, in the county and State aforesaid, in the full and just sum of one thousand dollars lawful money of the United States of America, to be paid to the said John High, jr., his executors, administrators, or assigns, to which payment, well and truly to be made, I bind myself, my heirs, executors, and administrators, firmly by these presents. Sealed with my seal, and dated this eighteenth day of June, in the year of our Lord one thousand eight hundred and fifty-seven, (A. D. 1857.)

Whereas Origen S. Seymour, Horatio Seymour, John F. Seymour, Rutger B. Miller, Mary F. Miller, Edmund A. Wetmore, trustee of Mrs. Mary F. Miller, Ledyard Linklaen, and Helen C. Linklaen, Edward F. Shonnard, and Sophia A. Shonnard, Roscoe Conklin,
55 and Julia C. Conklin have filed their petition in the Cook county court of common pleas, in the State of Illinois aforesaid, praying for the removal of a certain cause pending in said court on the chancery side thereof, in which said John, jr., is complainant, and they, the said Origen S. Seymour, Horatio Seymour, John F. Seymour, Rutger B. Miller, Mary F. Miller, Edmund A. Wetmore, trustee of said Mrs. Mary F. Miller, Ledyard Linklaen, Helen C. Linklaen, Edwin F. Shonnard, Sophia A. Shonnard, Roscoe Conklin, and Julia C. Conklin are defendants for trial, into the next United States circuit court to be held in the district where said cause is pending.

Now the condition of said obligation is such that if the said Origen S. Seymour, Horatio Seymour, John F. Seymour, Ledyard Linklaen, Helen C. Linklaen, Rutger B. Miller, Mary F. Miller, Edmund A. Wetmore, trustee of Mrs. Mary F. Miller, Edward F. Shonnard, and Sophia A. Shonnard, Roscoe Conkling, and Julia C. Conklin enter or cause to be entered in such court as the said suit may be removed to for trial, on the first day of its session, copies of said process against them, then this obligation to be null and void, else to remain in full force and effect.

[SEAL.] A. C. COVENTRY.

56 Signed, sealed, and delivered in the presence of—
W. KIMBALL.

Approved June 20th, 1857.

JOHN M. WILSON,
Judge of the Cook County Court of Common Pleas.

Indorsed: Filed June 20, 1857.

W. KIMBALL, *Cl'k.*

Filed July 6th, 1856.

WM. H. BRADLEY, *Cl'k.*

Fee bill.

Cook county c't common pleas, June special term, 1857.

JOHN HIGH, jr., surv'r of PHEBE MEEKER, &c., *vs.* HORATIO SEYMOUR *et al.* } Bill in chancery.

April T. Plaintiff's costs.

App. and att'y, 15; dec., 10; aff., 10; fil. fee bill, aff., and ex., 30	$0 65
Sum's and fil., 40; aff. no res. and fil., 15; pub. notice and fil., 55	1 10
Con., 20; June T. doc., 10; M. and ex., 30; ent. suggestion death	60
Seymour, 20; copy bill, cost, 20	40
Cert. and seal, 35	35
	3 10
Judge fee	3 00
Jno. L. Wilson, sh'ff ret. sum's, 10	10
Ray, Medill & Co., printing notice	12 00
	18 20

57 STATE OF ILLINOIS, *Cook County:*

I, Walter Kimball, clerk of the Cook county court of common pleas in and for said county, do hereby certify that the above is a true copy from my fee book.

In testimony whereof I hereunto subscribe my name, and affix my official seal, at Chicago, this 6th day of July, 1857.

[SEAL.] WALTER KIMBAL, *Cl'k.*

Indorsed: Filed July 6th, 1857.

WM. H. BRADLEY, *Cl'k.*

58 *Petition.*

In the Cook county court of common pleas, in and for Cook county, in the State of Illinois, on the equity side thereof.

JOHN HIGH, jr., administrator of the estate of Jeremiah Price, deceased, *vs.* EPAPHRO SEYMOUR, HORATIO SEYMOUR, ORIGEN S. Seymour, as executors; and Horatio Seymour, John F. Seymour, Rutger B. Miller, Mary F. Miller, Edmund A. Wetmore, trustee of Mrs. Mary F. Miller, Edward F. Shonnard, Sophia A. Shonnard, Ledyard Lincklaen, Helen C. Lincklaen, Roscoe Conkling, and Julia C. Conkling, as heirs-at-law and legal representatives of Henry Seymour, deceased.	Bill for an account, the appointment of a receiver or agent, and the sale of real estate.

To the honorable the Cook county court of common pleas, sitting in equity:

The petition of Horatio Seymour, Origen S. Seymour, John F. Seymour, Rutger B. Miller, Mary F. Miller, Edmund A. Wetmore, trustee of Mrs. Mary F. Miller, Edward F. Shonnard, Sophia
59 A. Shonnard, Ledyard Lincklaen, Helen C. Lincklaen, Roscoe Conkling, and Julia C. Conkling, who are all citizens of the United States, and neither of them citizens of the State of Illinois, respectfully showeth that a suit has been commenced against your petitioners, together with Epaphro Seymour, since deceased, in the Cook county court of common pleas, in the State of Illinois aforesaid, on the equity side of said court, by John High, jr., a resident in and citizen of the said county of Cork and State of Illinois aforesaid, praying that an account be taken between your petitioners and the said John High, jr., as administrator of the estate of Jeremiah Price, deceased, and also praying for the sale of certain real estate particularly set forth and stated in said bill of complaint, filed in this suit against your petitioners and said Epaphro Seymour, which said bill is hereby referred to and prayed to be taken and considered as a part of your petitioners' petition, and also asking for the appointment of a receiver or agent, all of which are particularly set forth in said complainant's bill of complaint and in the exhibits filed
60 in this cause.

Your petitioners further state that the said John High, jr., complainant in said suit, and by whom said suit has been commenced, is a citizen of the county of Cook and State of Illinois; and that your petitioner, Origen S. Seymour, one of the defendants in this said suit, is a citizen of the county of Litchfield, in the State of Connecticut; and that your petitioners Horatio Seymour, John F. Seymour, Rutger B. Miller, Mary F. Miller, Edmund A. Wetmore, trustee of Mrs. Mary F. Miller, Roscoe Conkling, and Julia C. Conkling, who are each of them defendants in said suit, are all of them citizens of the

county of Oneida and State of New York; and that your petitioners, Ledyard Lincklaen and Helen C. Lincklaen, defendants in said suit, are both of them citizens of the county of Madison and State of New York; and that said petitioners, Edward F. Shonnard and Sophia A. Shonnard, defendants in said suit, are both of them citizens of the county of Westchester and State of New York; and that the matter in dispute exceeds the sum of five hundred dollars, exclusive of costs.

Your petitioners therefore pray that the said cause may be
61 removed for trial into the next United States circuit court, to be holden in the district where said suit is pending, and offer to this honorable court good and sufficient security for their entering in such court as the trial of said cause may be removed to on the first day of its session, copies of process against them, and also for their appearing in said court. And, as in duty bound, they will ever pray, &c.

A. C. COVENTRY,
Solicitor.
ALFRED CONKLING,
Of Counsel.

ORIGEN S. SEYMOUR,
By A. C. COVENTRY, *his Sol.*
HORATIO SEYMOUR,
By A. C. COVENTRY, *his Sol.*
RUTGER B. MILLER.
By A. C. COVENTRY, *his Sol.*
MARY F. MILLER,
By A. C. COVENTRY, *her Sol.*
EDMUND A. WETMORE,
By A. C. COVENTRY, *his Sol.*
LEDYARD LINCKLAEN.
By A. C. COVENTRY, *his Sol.*
HELEN C. LINCKLAEN,
By A. C. COVENTRY, *her Sol.*
EDWARD F. SHONNARD,
By A. C. COVENTRY, *his Sol.*
62
SOPHIA A. SHONNARD,
By A. C. COVENTRY, *her Sol.*
ROSCOE CONKLING,
By A. C. COVENTRY, *his Sol.*
JULIA C. CONKLING,
By A. C. COVENTRY, *her Sol.*
JOHN F. SEYMOUR.

STATE OF ILLINOIS, *Cook County, ss:*

John F. Seymour, of Utica, in the county of Oneida and State of New York, being first duly sworn, deposeth and says that he, this deponent, is one of the petitioners named in the foregoing petition by him signed, that he has heard the same read and knows the contents thereof, that the same and the matters and facts therein set forth and stated are true to the knowledge of this deponent.

JOHN F. SEYMOUR.

Subscribed and sworn to before me, this 19th day of June, A. D. 1857.

WM. L. CHURCH,
Clerk Cir. Court.

Indorsed: Filed June 20, 1857.

W. KIMBALL, *Cl'k.*

Indorsed: Filed July 6th, 1857.

WM. H. BRADLEY, *Cl'k.*

63 On this day, to wit, the 6th day of July, A. D. 1857, came said defendants by their solicitors and filed in said clerk's office their demurrer to the bill of complaint in said entitled cause, which said demurrer is in the words and figures following, to wit:

Demurrer.

Circuit court of the United States in and for the northern district of Illinois, in chancery.

To the honorable Thomas Drummond, judge of the circuit court of the United States in and for the northern district of Illinois,
64 in chancery sitting:

The joint and several demurrer of Origen S. Seymour, Horatio Seymour, John F. Seymour, Rutger B. Miller and Mary F., his wife, Edmund A. Wetmore, trustee of Mrs. Mary F. Miller, Edward F. Shonnard, and Sophia A. Shonnard, his wife, Ledyard Lincklaen and Helen C. Lincklaen, his wife, Roscoe Conkling and Julia C. Conkling, his wife, defendants to the bill of complaint of John High, jr., complainant:

These defendants, by protestation not confessing or acknowledging all or any of the matters and things in the said complainant's said bill of complaint contained to be true in such manner and form as the same are therein set forth and alleged, do demur to the said bill, and for cause of demurrer show that the said complainant has not *not* by his said bill made such a case as entitles him in a court of equity to any discovery from these defendants respectively, or any of them, or any such relief against them as to the matters contained in the said bill, as is thereby sought and prayed for, or any such matters, and that any discovery which can be made by these defendants, or any of them, cannot be of any avail to the said complain-
65 ants for any of the purposes for which a discovery is sought against these defendants by the said bill, nor entitle the said complainants to any relief in this court touching any of the matters therein complained of, and also that all and any of the matters in the said complainant's bill mentioned and complained of, are matters which may be tried and determined at law, and with respect to which the said complainant is not entitled to any relief from a court of equity, and also that as to so much of the said bill as seeks relief touching service rendered, time and attention bestowed, and expenses

incurred by the said Jeremiah Price, deceased, in the said bill named, in pursuance of the agreement in writing therein mentioned, made and entered into by and between Henry Seymour, deceased, in the said bill named, and the said Jeremiah Price, on or about the ninth day of May, eighteen hundred and thirty-five, as in and by the said bill of complaint is alleged and set forth of the said Jeremiah Price, in his lifetime or the said complainant ever had any cause of action or suit against these defendants for or concerning such ser-
66 vices rendered, time and attention bestowed, and expenses incurred, which these defendants do in no sort admit, such action or suit is barred as appears on the face of the said bill by the eflux of time, therefore and for divers other errors and defects in the said bill the said defendants demur thereto in law, and pray the judgment of this honorable court whether they shall be compelled to make any other or further answer thereto, and also pray to be hence dismissed with their costs, &c.

A. C. COVENTRY, *Solicitor.*
ALFRED CONKLING, *of Counsel.*

Indorsed: Filed July 6th, 1857.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the 18th day of November, A. D. 1857, in the record of the proceedings of said court in chancery in said entitled cause is the following entry, to wit:

JOHN HIGH, jr., survivors of PHEBE MEEKER, and sole surviving administrator, &c., of Jeremiah Price, deceased,
vs.
EPAPHRO SEYMOUR, HORATIO SEYMOUR, and Origen S. Seymour, executors of the
67 last will and testament of Henry Seymour, deceased, and the said Horatio Seymour.
} In chancery.

Now come the complainants, by Messrs. Mather and Taft, their solicitors, and suggest of record the death of the said John High, jr., and by leave of the court, the name of Lemuel C. P. Freer, as administrator of the estate of Jeremiah Price, deceased, is substituted on the record as complainant herein.

On this day, to wit, the 24th day of May, A. D. 1859, in the record of the proceedings of said court in chancery in said entitled cause is the following entry, to wit:

LEMUEL C. P. FREER, adm'r of JEREMIAH Price, deceased,
v.
HORATIO SEYMOUR *et al.*, executor of HENRY Seymour, d'c.
} In chancery.

Now come the parties by their solicitors, and the court having fully considered and being now fully advised upon the demurrer of the

defendants to the bill of complaint herein, overrules the same, and leave is given the defendant to file answer to said bill of com-
68 plaint.

On this day, to wit, the 27th day of June, A. D. 1859, came the parties by their solicitors, and filed in said clerk's office their stipulation in said entitled cause, which said stipulation is in the words and figures following, to wit:

Stip. as to ans. of J. F. S. et al.

United States circuit court in and for the northern district of Illinois, in chancery.

L. C. PAINE FREER, administrator de bonis non, &c.,
vs.
JOHN F. SEYMOUR, HORATIO SEYMOUR, *et als.*

And now this day comes the complainant into court, by Messrs. Mather, Taft & King, his solicitors, and the said defendants, John F. Seymour, Rutger B. Miller, Mary F. Miller, Edmund A. Wetmore, Ledyard Lincklaen Helen C. Lincklaen, Edward F. Shonnard, Sophia A. Shonnard, Roscoe Conkling, Julia C. Conkling, and Origen S. Seymour, by Coventry & Rountree, their solicitors, also come, and it is mutually agreed and stipulated between the several parties that the answers of the said John F. Seymour, Rutger B. Miller, Mary
69 F. Miller, Edmund A. Wetmore, Ledyard Lincklaen, Helen C. Lincklaen, Edward F. Shonnard, Sophia A. Shonnard, Roscoe Conklin, Julia C. Conklin, and Origen S. Seymour, to the bill of complaint of L. C. Paine Freer, in the above-entitled cause, may and shall be filed without the oaths of the said defendants lastly above named, and that said answers shall be signed by A. C. Coventry, their solicitors, the several personal signatures of said last above named defendants being hereby waived and dispensed with, and that an order of court in said cause above entitled be entered in pursuance hereof.

Chicago, June 24th, 1859.

MATHER, TAFT & KING,
For Complainant.
COVENTRY & ROUNTREE,
Solicitors for Defendant.

Indorsed: Filed June 27th, 1859.

WM. H. BRADLEY, *Clerk.*

On this day, to wit, the 27th day of June, A. D. 1859, came said defendants, John F. Seymour *et al.*, by their solicitors, and filed in said clerk's office their answer in said entitled cause, which is
70 as follows:

Answer of J. F. Seymour et al.

Circuit court of the United States, northern district of Illinois, in chancery.

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

To the honorable the judges of the circuit court of the United States in and for the northern district of Illinois, in the seventh judicial circuit, in chancery sitting:

The joint and several answer of John F. Seymour, Rutger B. Miller, Mary F. Miller, Edmund A. Wetmore, Edward F. Shonnard, Sophia A. Shonnard, Ledyard Lincklaen, Helen C. Lincklaen, Roscoe Conklin, Julia C. Conklin, and Origen S. Seymour, to the bill of complaint of L. C. Paine Freer, administrator de bonis non of the goods and chattles of Jeremiah Price, deceased, exhibited against these defendants, and another in the circuit court of the United States in and for the northern district of Illinois, in the seventh judicial circuit, in chancery, first by John High, jr., as administrator of the goods and chattels, rights and credits, of said Jeremiah Price, and revived by consent, by the substitution of said Freer as party complainant, on the death of said High.

71

These defendants, now and at all times hereafter saving and reserving to themselves all and all manner of benefit and advantage of exception to the many errors, insufficiencies, and other imperfections in the said complainant's said bill of complaint contained, for answer thereunto, or unto so much and such parts thereof as they answering are advised is material and necessary for them answering to make answer unto, answer and say:

That they admit that Henry Seymour and Jeremiah Price did, on the ninth day of May, A. D. 1835, or thereabouts, enter into a certain agreement in writing, of the date and tenor in the said bill of complaint for that purpose mentioned.

And these defendants, further answering, say, that they believe it to be true, that the said agreement was made in the State of New York, and that at the same time the said Henry Seymour placed in the hands of said Jeremiah Price the sum of five thousand dollars, to be by him laid out in pursuance of the said agreement, and that the said Jeremiah Price, soon after his return to the city of Chicago, entered upon the performance of said agreement, and purchased lands from time to time, and to the amount in that behalf mentioned in said bill of complaint, and that the trifling balance remaining in his hands was by him accounted for as is in said bill mentioned.

72

And these defendants, further answering, say that they believe the number of acres of lands purchased as aforesaid by the said Jeremiah

Price to be truly stated in the said bill of complaint, and that the said lands are situate in the State of Illinois as therein stated.

And these defendants, further answering, admit that the said Jeremiah Price had charge of the said lands so purchased by him for the said Henry Seymour from the time of the purchase thereof until
73 the time of his death, in the month of July, 1854, and that moneys were from time to time advanced to bring by the said Henry Seymour, during his life, and by or in behalf of his devisees, after his death, to defray the expenses of guarding and taking care of the said lands, preventing trespasses, and other injuries thereto, and paying taxes on the same, and also that in rendering such services, after the expiration of the period of five years specified in the said agreement as the time within which the said lands were to be sold, he, the said Jeremiah Price, acted as the agent of the devisees of the said Henry Seymour, but inasmuch as the said Jeremiah Price had, by the terms of the said agreement, a contingent interest in the proceeds of any sale that might be made of the said lands during the continuance of the said period, and considering that the said Henry Seymour was a citizen and resident of the State of New York, while the said Jeremiah Price resided in the city of Chicago, these defendants believe and are advised that he ought rather to be regarded as having acted towards the
74 said lands, until the expiration of the said period, only in pursuance of a mutual understanding to that effect betweeen the said Henry Seymour and himself at the time of entering into the said agreement, and not otherwise, as the agent of the said Henry Seymour and his devisees.

And these defendants, further answering, say that they are wholly ignorant whether any, and if any, what steps were taken by the said Henry Seymour personally, during his lifetime, to sell the said lands, but they entertain no doubt that he would gladly have availed himself of any opportunity that might have been found to dispose of the same advantageously, especially if he had been requested to do so by the said Jeremiah Price. And further answering, these defendants say that at the decease of the said Henry Seymour, in the month of July, 1837, the management of his estate, including the said lands, devolved mainly upon the defendant Horatio Seymour, as the elder son of the said Henry Seymour, under whose general charge the said lands have ever since remained with the full consent or ac-
75 quiescence of the other defendants, who were at all times ready to follow his advice relative thereto, but that neither of them, except the defendant John F. Seymour, had any exact personal knowledge of the quantity, situation, or value of the same. These defendants, except the defendant John F. Seymour, are accordingly wholly ignorant whether any, and if any, what steps were taken by the defendants Horatio Seymour, or the defendant John F. Seymour, after the decease of the said Henry Seymour, to sell the said lands, and this defendant John F. Seymour, for himself and of his own knowledge, says, and the others of the defendants, from informa-

tion and belief, say, that the said defendants, Horatio Seymour and John F. Seymour, were at all times, after the decease of the said Henry Seymour, desirous of selling the said lands as the said Jeremiah Price well knew, and would gladly have embraced any opportunity to do so at any price which would have afforded a profit, however inconsiderable, on the cost, and that all the other defendants were at all times ready to join in such sale; but that shortly
76 after the purchase of the said lands, real estate generally, and especially in the northern States, declined greatly in value, in so much that the said lands became unsaleable, and so continued through the whole remainder of the period prescribed in the said agreement for the sale thereof, and it was accordingly wholly out of their power to sell the same for a sum that would have yielded a profit on the investment therein, computed according to the conditions of the said agreement, nor did the said Jeremiah Price, at any time during the remainder of the said period mentioned in said agreement, request a sale thereof; and so powerful were the causes that led to the aforesaid revulsion and depression in the marketable value of real estate in the State of Illinois, that although the said Jeremiah Price, as he well understood, was, after the expiration of the said period of five years mentioned in said agreements, charged with the duty as sole agent for the devisees of the said Henry Seymour of seeking purchasers for the said lands, he was unable, during his lifetime, as far as these defendants are informed, or have reason
77 to believe, to effect a sale of a single acre of the same upon any terms advantageous to the said devisees.

And in answer to the charge contained in the said bill of complaint that nothing has been done or suffered on the part of the said Jeremiah Price to excuse or release the said Henry Seymour, his heirs and devisees, or personal representatives, from a full performance of the stipulation on the part of the said Seymour, contained in the said agreement relative to the sale of the said lands and the payment of one-half of the net profit to be derived therefrom to the said Price, these defendants, further answering, say that they believe it to be true, and therefore admit that no such thing was done or suffered by the said Price with any such intent during the continuance of the period of five years, specified in the said stipulation for the performance thereof; but these defendants further say that if by reason of the omission of the said Henry Seymour during his lifetime, or of his devisees since, to sell the said lands before the expiration of the said period, the said Jeremiah Price had any cause of complaint
79 against these defendants, or either of them, by demand, action, or suit, or otherwise; the same did arise or accrue above five years before plaintiff commenced his suit or serving defendants with process to appear and answer thereto, and therefore such demand, action, or suit, within the true reason of the statute of the State of Illinois, approved February tenth, 1827, entitled an act for the limitation of actions and for avoiding vexatious law suits should have been commenced, if at all, within that time, and so far, if at all, as it may

have been intended by the said charge to assume or intimate that the obligation imposed by said stipulation continued after the expiration of the limitation of five years therein prescribed for its performance, these defendants insist that the said charge is not warranted by the terms of the said agreement, and they deny that it was so understood by the parties thereto, or either of them, during the lifetime of the said Price, or that he ever intimated to these defendants, or any of them, that he so interpreted it; but, on the contrary, these defendants say that he at no time after the lapse of the said period claimed any interest in the proceeds of any sale that might eventually be made of the said lands, or pre-
80 tended to stand in any other relation towards them than that of sole agent for the devisees of the said Henry Seymour, to take care of the same, and if possible, to negotiate sales thereof, subject to the approval of the said devisees and for their exclusive benefit.

And these defendants, further answering, say that they have been informed and believe it to be true, that the said Jeremiah Price departed this life at Chicago, in the month of July, 1854, leaving no other than a nuncupative will, which was reduced to writing, duly proved, admitted to probate, and recorded, and that letters of administration were granted and duly issued, whereby the administration of the personal estate of the said Price was committed to John High, jr., and Phebe Meeker, as administrator and administratrix, and that the said Phebe Meeke died, leaving the said John High the sole surviving administrator of the said estate, as stated in the said bill of complaint.

And these defendants, further answering, admit that the said Henry Seymour departed this life at the city of Utica, in the State of
81 New York, in the month of August, 1837, leaving his last will and testament, whereby he devised his estate to his six children, and charged his executors with a trust relative to the share of his daughter Mary, which trust was afterwards resigned by his said executors, and passed into the hands of Edmond A. Wetmore, of the said city of Utica, as stated in the said bill of complaint for that purpose mentioned.

And these defendants, further answering, admit that after the death of the said Jeremiah Price the said John High acted as the agent of the devisees of the said Henry Seymour, to look after the aforesaid lands, to pay taxes thereon, and to make sales thereof, and that the said John High kept accounts of his expenditures and receipts on account of the said lands, as in the said bill of complaint stated, of which however these defendants have no knowledge except what they derive from the said bill of complaint, and the truth of which they therefore neither admit nor deny.

And these defendants, further answering, admit that the said John High, as such agent, sold a part of the said lands, as in the
82 said bill of complaint stated, and for the sum therein in that behalf mentioned, that he received in part payment for the

lands, so by him sold, the sum of thirty-three thousand five hundred and ninety-eight dollars and ten cents, of which sum he appropriated two thousand seven hundred and forty-two dollars and sixty-one for commissions on the sales so by him made, and for other expenses incident to the said lands, and that he paid over to the devisees of the said Henry Seymour moneys on account of such sales, leaving in his hands, of the moneys so received by him, a balance which these defendants insist he ought without delay to have paid over to the devisees of the said Henry Seymour, whatever may have been the true result of the arithmetical computations mentioned in the said bill of complaint into which, it appears by the said bill, the said John High saw fit to enter.

And these defendants, further answering, admit that they have been applied to for the several purposes alleged by the said complainant in his, said complainant's, said bill of complaint, and
83 these defendants say that they have always been and still are willing to allow and pay a reasonable compensation for the services of the said Jeremiah Price and of the said John High, as their agents, with respect to the said lands; and these defendants submit to this honorable court that, except for such compensation, the plaintiff has no lawful claim upon them.

And these defendants submit to this honorable court that the reasons set forth in the said bill of complaint, on account of which it is therein alleged that the interposition of a court of equity to ascertain, adjust, and declare the rights of the respective parties in the premises has become indispensable, constitute no valid grounds whatever for such interposition. The devisees of the said Henry Seymour stand in his place as to any liability founded in the aforesaid agreement, the marriage of his daughters has no other effect upon any remedy it affords, except that of requiring the joinder of their husbands with them in an action upon the said agreement; no dis-
84 sent, as erreonously stated in the said bill of complaint, has occurred; the executors of the said Henry Seymour have no concern as such with the controversy, and ought not to have been made defendants in this suit; the devisees are all well known citizens of the State of New York; they are fully competent to dispose of the said lands without the aid of a receiver; they are not wanting in ability to refund any moneys arising from sales made or to be made of the said lands which this honorable court may adjudge to belong to the plaintiff, and the courts of the State of New York will be ready, if necessary, to compel obedience to such decree. These defendants, therefore, respectfully submit to this honorable court that the plaintiff's prayer for an injunction and for the appointment of a receiver is wholly unreasonable, and ought not to be granted.

All which matters and things these defendants are ready to aver, maintain, and prove as this honorable court shall direct, and humbly

pray to be hence dismissed with their reasonable costs and
85 charges in that behalf most wrongfully sustained.

COVENTRY & ROUNTREE,
Solicitors.
Hon. A. CONKLING,
Of Counsel.
A. C. COVENTRY,
Of Counsel.

JOHN F. SEYMOUR,
By A. C. COVENTRY, *his Sol.*
RUTGER B. MILLER,
By A. C. COVENTRY, *his Sol.*
MARY F. MILLER,
By A. C. COVENTRY, *her Sol.*
EDMUND A. WETMORE,
By A. C. COVENTRY, *his Solicitor.*
LEDYARD LINKLAEN,
By A. C. COVENTRY, *his Sol.*
HELEN C. LINKLAEN,
By A. C. COVENTRY, *her Sol.*
EDWARD F. SHONNARD,
By A. C. COVENTRY, *his Sol.*
SOPHIA A. SHONNARD,
By A. C. COVENTRY, *her Sol.*
ROSCOE CONKLING,
By A. C. COVENTRY, *his Sol.*
JULIA C. CONKLING,
By A. C. COVENTRY, *her Sol.*
ORIGIN S. SEYMOUR,
By A. C. COVENTRY, *his Solicitor.*

Indorsed: Filed June 27th, 1859.

WM. H. BRADLEY, *Cl'k.*

86 On this day, to wit, the 28th day of October, A. D. 1859, came said parties by their solicitors, and filed in said clerk's office their stipulation in said entitled cause, which said stipulation is in the words and figures following, to wit:

Stipulation as to ans. of H. Seymour.

Circuit court of the United States, northern district of Illinois.

L. C. PAINE FREER
vs.
HORATIO SEYMOUR, *et al.* } In chancery.

It is hereby stipulated by and between the several parties to the above-entitled cause, represented by their separate solicitors, that the answer of Horatio Seymour, defendant in said cause shall be filed without oath, and signed by said Coventry for said Seymour, with the same effect as if signed by said Seymour, the oath to said answers being hereby waived.

Chicago, Oct. 27th, 1859.
Chicago, Oct. 27th, 1859.

A. C. COVENTRY,
Sol. for Def'ts in above cause.
87 MATHER & TAFT,
Sol'rs for Comp'lt.

Indorsed: Filed Oct. 28th, 1859.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the 28th day of October, A. D. 1859, came said defendant, Horatio Seymour, by his solicitors, and filed in said clerk's office his answer in said entitled cause, which said answer is in words and figures following, to wit:

88 *Answer of H. Seymour.*

Circuit court of the United States, northern district of Illinois, in chancery.

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

To the honorable the judges of the circuit court of the United States in and for the northern district of Illinois, in chancery sitting:

The several answer of Horatio Seymour to the bill of complaint of L. C. Paine Freer, administrator de bonis non of the goods and chattels of Jeremiah Price, deceased, exhibited against this defendant and others in the circuit court of the United States in and for the northern district of Illinois, in the seventh judicial circuit, in chancery, first, by John High, jr., as administrator of the goods and chattles, rights and credits of said Jeremiah Price, and second, by consent, by the substitution of said Freer as the party complainant on the death of said High.

This defendant, now and at all times hereafter saving and reserving to himself all and all manner of benefit and advantage of ex-
89 ception to the many errors, insufficiencies, and other imperfections in the said complainant's said bill of complaint, for answer thereunto or unto so much or such parts thereof as he is advised is material and necessary for him to make answer unto, answers and says:

That he denies each and every allegation in said bill contained, except such as are hereinafter expressly admitted. That he admits that Henry Seymour and Jeremiah Price did, on the 9th day of May, A. D. 1835, enter into the agreement in writing, a copy of which is set forth in the said bill of complaint as Exhibit A, excepting that the words "For him" should be inserted in the 20th line of said copy after the words "purchased," and before the words as "aforesaid," to correspond with the 22d line of the original.

And this defendant, further answering, say that they believe it to be true that the said agreement was made in the State of New York, and that at the same time the said Henry Seymour placed in the hands of said Jeremiah Price the sum of five thousand dollars, to be by him laid out in pursuance of the said agreement, and that said Jeremiah Price, soon after his return to the city of Chicago, entered upon the performance of said agreement, and purchased lands
90 from time to time, and to the amount in that behalf mentioned in said bill of complaint; that the trifling balance mentioned in said bill of complaint remaining in his hands was by him accounted for as in said bill is mentioned.

And this defendant, furthering answering, says that he believes the number of acres of land purchased as aforesaid by the said Jeremiah

Price to be truly stated in said bill of complaint, and that the said lands are situated in the State of Illinois, as therein stated, and were conveyed to Henry Seymour in 1835 and 1836.

This defendant denies that from the time when the said lands were purchased in 1835, to July, 1854, that said Price acted as agent for said Henry Seymour, and his heirs and devisees, in guarding and taking care of said lands, preventing trespasses and other injuries thereto, and in paying taxes thereon, as stated in said bill of complaint, except as hereinafter stated; but this defendant avers that the lands so purchased were all wild and unoccupied lots, and the same were not subject to taxation during the lifetime of the said Henry Seymour, nor for several years thereafter, nor during the five years mentioned in said agreement, except a trifling local tax on the lots in the village of Joliet, that on said lots in Joliet only the
91 sum of two dollars and ninety cents was paid during the life of the said Henry Seymour, which was paid out of the sum of five thousand dollars originally advanced by said Seymour, and this defendant avers that the nature and condition of said property did not require any special care on the part of said Price, and that the whole amount of taxes and expenses paid by him on account of the lands purchased under said agreement, within five years from the date thereof, was less than twenty dollars, and that at the death of the said Henry Seymour, in 1837, the said Mary S. Miller, one of the defendants, was, and ever since has been, a married woman, and two of them, to wit, Helen C. Lincklain and Julia C. Conkling, were, on the expiration of said five years, infants under the age of twenty-one years; that after the death of the said Henry Seymour, this defendant, Horatio Seymour, sent to the said Jeremiah Price money from time to time to pay taxes on said lands after the same became liable to taxation, and that during said five years, said Price rendered no service in relation to said lands, excepting such as he was bound to render by said agreement; that at and since the death of said Henry Seymour, the said defendants have resided in the State of New
92 York, and the property purchased was in the State of Illinois, and near the residence of the said Jeremiah Price, in Chicago; and that the said defendants consulted with the said Price from time to time with regard to the value of said property, and the expediency of selling the same, and relied on his judgment in relation thereto, and requested him to exercise a general oversight; that none of these defendants, except the said Horatio Seymour, John F. Seymour, and Edward A. Wetmore, have ever seen said property or communicated with said *said* Price in relation to the same.

This defendant denies that the said Henry Seymour, during his lifetime, and that this defendant, since his decease, took no measures to sell said lands during the said five years; and he also denies that the defendants neglected to try to dispose of said lands after said five years and during the life of said Price, and he denies that the neglect or failure to sell, or postponement of sale, was in any respect for the mutual benefit of said Jeremiah Price and Henry Seymour and the said defendants, and that therefore the said Price did not urge or in-

sist upon an early sale of said lands, according to the requirements of the agreement as in the complaint is alleged; but he avers,
93 on the contrary, that the said Henry Seymour, during his lifetime, and the said defendants, since his death, have at all times been anxious to dispose of the same if they could do so without loss; and that within said five years, and for a long period thereafter, said property could not be sold for the cost, interest, taxes, and expenses; and this defendant denies that the said Jeremiah Price did not waive any right, if any he had, to have said property sold within said five years under said agreement, and he avers that the said Price waived the sale of said lands in said five years. And he further avers that although he, said Price, had the general oversight on behalf of the defendants, and was better acquainted with its value and situation than the defendants, and was consulted by them with regard to its disposition, and that they requested him to find purchasers thereof, if possible, yet he, said Price, not only did not ask or advise that the same should be sold under said agreement or otherwise, but during said five years and afterwards, he at different times advised against making any sales, and never made any; and this defendant avers that he, said Price, did waive, excuse, and release the said defendants from any claim or interest under said agreement, and that he, said Price, always treated the defendants as the sole owners
94 of said property, and solely entitled to the proceeds thereof, and never pretended to the defendants to have any interest, and that he, said Price, refused and omitted to pay the taxes on said lands, or any portion thereof, but the said Jeremiah Price claimed that he ought to be allowed a reasonable compensation for his services as agent, and not under said contract, and the said defendants have always been willing to allow him such reasonable compensation; and this defendant avers that the said defendants have done no act whereby the said Jeremiah Price might claim the right to any share on the profits of said property after the expiration of the said five years.

And this defendant, further answering, avers that by the terms of said agreement between the said Henry Seymour and Jeremiah Price. the lands mentioned in said complaint and agreement were to be sold within five years from the time of the making of said agreement, and of the profits which should be made by the purchase and sale of said lands, after deducting and charging the investment and the taxes and other charges, together with seven per cent. interest, then the said Price was to have one-half of the same in full
95 payment for explorations and the services and expenses mentioned in said agreement, and was not to be entitled to anything unless the said lands were or could be sold for a profit as aforesaid within said five years; that the said lands could not have been sold at any time during the five years aforesaid, by reason of their depreciation in value, for the amount of their investment, interest, taxes, and charges aforesaid; that no profits or sales could be made of said lands during the said five years, and that no profits or sales were made of said lands during the said five years, and there-

fore said Price was not entitled to any sum as his share of the profits of said transactions; and he further avers that the said defendants have not in any way continued or extended the said agreement with said Price or with the said John High, or with the plaintiff, since the expiration of the five years mentioned in the agreement described in the complaint.

And in further answer to the charges contained in the said bill of complaint, that nothing has been done or suffered on the part of the said Jeremiah Price to excuse or release the said Henry Seymour, his heirs and devisees or personal representatives, from a full
96 performance of the stipulations on the part of the said Seymour contained in the said agreement relative to the sale of the said lands, and the payment of the one-half of the net profits to be derived therefrom to the said Price, this defendant says, that if by reason of the omission of the said Henry Seymour during his lifetime, or of his devisees since, to sell the said lands before the expiration of the said period of five years mentioned in said agreement, or for any other reason growing out of said agreement, the said Jeremiah Price had any cause of complaint against the said defendants, or either of them, by demand, action, or suit, or otherwise, the same did arise or accrue more than five years before plaintiff commenced his suit or served defendants with process to appear and answer thereto, and therefore such demand, action, or suit, within the true reason of the statute of the State of Illinois, approved February 10th, 1827, entitled "An act for the limitation of actions, and for avoiding vexatious lawsuits," should have been commenced, if at all, within that time, and so far, if at all, as it may have been intended by the said charge, to assume or intimate that the obligation imposed by said stipulation continued after the expiration of the limitation of five years herein prescribed for its performance, this defendant insists that the said charge is not warranted by
97 the terms of the said agreement, and he denies that it was so understood by the parties thereto, or either of them, during the lifetime of the said Price, or that he ever intimated to the said defendants, or any of them, that he so interpreted it, but, on the contrary, this defendant says that he, said Price, at no time after the lapse of the said period claimed or asserted to them, said defendants, any interest in the proceeds of any sale that might eventually be made of the said lands, or pretended to stand in any other relation towards them than that of agent for the devisees of the said Henry Seymour, to take care of the same, if possible, to negotiate sales thereof subject to the approval of the said devisees for their exclusive benefit, and to receive for such services as such agent a reasonable compensation, but not under said contract.

And this defendant, further answering, says, that he has been informed and believes it to be true, that the said Jeremiah Price departed this life at Chicago, in the month of July, 1854, leaving no other than a nuncupative will, which was reduced to writing, duly proved, admitted to probate and recorded, and that letters of administration were granted and duly issued, whereby the adminis-

tration of the personal estate of the said Price was committed
98 to John High, jr., and Phebe Meeker as administrator and administratrix, and that the said Phebe Meeker died, leaving the said John High, junior, the sole surviving administrator of the said estate, as stated in the said bill of complaint.

And this defendant, further answering, admits that the said Henry Seymour departed this life at the city of Utica, in the State of New York, in the month of August, 1837, leaving his last will and testament, whereby he devised his estate to his children named in said bill of complaint, and directing his estate to be distributed among them as in cases of intestacy, and that by said will Epaphro Seymour, Origin S. Seymour, and Horatio Seymour, one of these defendants, as executors thereof, who have taken upon themselves the execution of said will; that the said Epaphros has since departed this life; and these defendants further admit that the said Henry Seymour, and by said will, charged his executors with a trust relative to the share of his daughter Mary, which trust was afterwards resigned by his said executors, and passed into the hands of Edmund A. Wetmore, of the said city of Utica, as stated in the said bill of complaint.

And this defendant, further answering that part of complainant's bill which states that the said John High, junior, acted as
99 agent for the heirs and devisees, as well as the executors of the said Henry Seymour, under a retainer confided to him by them since the death of the said Jeremiah Price, to see to the lands aforesaid, to pay taxes and make sales thereof, denies the same and every part thereof except as hereinafter stated; and he also denies that the accounts of said High, annexed to said bill of complaint, show any proper continuation of the respective accounts of expenditures on, as well as receipts from said lands, with the accounts of sales thereof and proceeds received to the present time; on the contrary, he alleges that the receipts and expenditures of said High have nothing to do with the receipts and expenditures of said Jeremiah Price; and this defendant avers that after the death of the said Jeremiah Price, said High was requested by the defendants, Horatio Seymour and John F. Seymour, and by none of the other defendants, to look after the said real estate, and to advise the said Horatio Seymour of the taxes to be paid on the same, so that he might remit necessary moneys for the due payment of the same; and he was also requested by the said John F. Seymour to find purchasers for the said property, but except such request, no power of attorney
100 was given to him; that the contracts for the sales of real estate which were made were not executed by said High as agent, but were made and executed by the defendants themselves, and the negotiations for said sales were made by the said defendants through the said John High, jr., and subject to ratification by the defendants, and he was to be allowed a reasonable compensation therefor.

This defendant also denies that said High was requested to exercise any supervision over said lands on account of any relationship which he had to the said Jeremiah Price or to his estate or to the

complainant in this bill, or that his employment grew out of said Price's contract with the said Henry Seymour, and that it was expressly understood between the said John F. Seymour and said High that his retainer as aforesaid was not to prejudice the rights of this defendant or to effect in any way the questions pending between them and the estate of the said Jeremiah Price.

And this defendant, further answering, denies that the said John High, junior, as administrator of Jeremiah Price, was justly entitled to any share whatever of the proceeds of the sales of the aforesaid lands; and this defendant also denies that the complainant, as administrator de bonis non of said Jeremiah Price, is justly entitled to any portion of the same.

101

And this defendant, further answering, admits that the said John High, in the manner hereinbefore stated sold a part of the said lands, as in said bill of complaint stated, and for the sum therein in that behalf mentioned, that he received in part payment for the lands so sold the sum of thirty-three thousand five hundred and ninety-eight dollars and ten cents, of which same he appropriated two thousand seven hundred and forty-two dollars and sixty-one cents for commissions on the sales so by him made, and for other expenses incident to the said lands, and that he paid over to the devisees of the said Henry Seymour moneys on account of such sales, leaving in his hands of the moneys so received by him a balance which these defendants insist he ought without delay to have paid over to them, whatever might have been the true result of the arithmetical computations into which it appears by the said bill the said John High saw fit to enter.

And this defendant, further answering, says that as to the accuracy and propriety of the accounts annexed to the complainant's bill of complaint the defendants are not sufficiently advised to make answer thereunto, and this defendant therefore does not admit or deny the same, but leave the complainants to make such proofs thereof as he shall be advised by his counsel may be necessary.

102

This defendant denies that the whole amount of the original investment, as well as the amount of all moneys advanced by executors and devisees for taxes and expenses of said lands since the original investment or purchase of the same, has now been refunded to the heirs and devisees of said Henry Seymour by the said John High, or any other person, from the proceeds of sales so made as aforesaid. And this defendant alleges that the representatives, heirs, and devisees of said Henry Seymour have paid other and large sums for taxes and expenses of said lands and the management thereof and the making of the sales of the same which are not set forth in the complainant's bill, nor in the schedule or exhibits thereto annexed; and he also claims that there is a large amount of interest on said original investment and on subsequent expenditures on account thereof, which are not set forth in the said bill of schedule or exhibits; and he denies that the sum of $88,488 82, or any other sum of money in complainant's hands devised from said

103

sales belong to the account of the profits derived from the investment aforesaid.

And this defendant, further answering, denies that the said defendants have been applied to for the several purposes alleged by the said complainant in his said bill of complaint, and this defendant submits to this honorable court that the reason set forth in the said bill of complaint, on account of which it is therein alleged that the interposition of a court of equity to ascertain, adjust, and declare the rights of the respective parties in the premises, has become indispensable, constitute no valid grounds whatever for such interposition.

And this defendant further submits to this court that the defendants in the complainant's bill of complaint are improperly united therein, and there being no identity or party of interest between them.

And this defendant further says that the devisees of said Henry Seymour are all well known as citizens of the State of New York; they are fully competent to dispose of the said lands without the aid of a receiver; they are not wanting in ability to refund any moneys arising from sales made or to be made of the said lands which
104 this honorable court may adjudge to belong to the complainant, and the courts of the State of New York will be ready, if necessary, to compel obedience to such decree.

This defendant therefore respectfully submits to this honorable court that the complainant's prayer for an injunction and for the appointment of a receiver is wholly unreasonable and ought not to be granted. All which matters and things this defendant is ready to verify, maintain, and prove as this honorable court shall direct, and humbly prays to be hence dismissed with his reasonable costs and charges in that behalf most wrongfully sustained.

And this defendant further prays that the injunction granted on the said bill of complaint be dissolved, and that the complainant be ordered by this honorable court to pay over to the defendants the moneys and proceeds of sales of the aforesaid lands now in his hands, or for such other and further relief as to this honorable court shall seem meet.

H. SEYMOUR.
By A. C. COVENTRY, *his Sol.*

A. C. COVENTRY, *of Sol.*
A. CONKLING, *of Counsel.*

Indorsed: Filed Oct. 23d, 1859.

WM. H. BRADLEY, *Clk.*

105 On this day, to wit, the 16th day of November, A. D. 1859, came said complainants, by their solicitors, and filed in said clerk's office their replications in said entitled cause, which said replications are in the words and figures following, to wit:

Replication to ans. of J. F. Seymour et al.

In the circuit court of the United States for the northern district of Illinois, in chancery.

In the circuit court of the U. S. for the nor. dist. of Ill's, November term, A. D. 1859.

L. C. PAINE FREER, ad'r de bonis non of Jeremiah Price, deceased,
vs.
JOHN F. SEYMOUR and others, executors, heirs, and devisees of Henry Seymour, deceased.

The replication of L. C. Paine Freer, administrator de
106 bonis non of Jeremiah Price, deceased, complainant to the joint and several answer of John F. Seymour, Rutger B. Miller, Mary F. Miller, Edmund A. Wetmore, Edward F. Shonnard and Sophia A. Shonnard, Ledyard Lincklaen, Helen C. Lincklaen, Roscoe Conklin, Julia C. Conklin, and Origen S. Seymour, defendants:

This repliant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the said defendants, for replication thereunto saith that he doth and will aver, maintain, and prove the said bill to be true, certain, and sufficient in the law to be answered unto by the said defendants, and that the answer of the said defendants is very uncertain, evasive, and insufficient in the law to be replied unto by this repliant, without this, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed or denied, is true, all of which matters and things this repliant is ready to
107 aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by the said bill he has already prayed.

MATHER & TAFT,
Solicitors and Counsel for the Complainant.

Indorsed: Filed Nov. 16th, 1859.

WM. H. BRADLEY, *Cl'k.*

Replication to ans. of H. Seymour.

In the circuit court of the United States for the northern district of Illinois, in chancery.

In the circuit court of the United States nor. dist. Ills., November term, A. D. 1859.

L. C. PAINE FREER, admr. de bonis non of Jeremiah Price, deceased,
vs.
HORATIO SEYMOUR and others, executors, heirs, and devisees of Henry Seymour, deceased.

The replication of L. C. Paine Freer, administrator de bonis non of Jeremiah Price, deceased, complainant, to the separate answer of Horatio Seymour, as one of the executors and as one of the heirs at law and devisees of Henry Seymour, deceased, one of the defendants:

This repliant, saving and reserving to himself all and all manner of advantage of exception which may be had and taken to the manifold errors, uncertainties, and insufficiencies of the answer of the
108 said defendant, for replication thereunto saith that he doth and will aver, maintain, and prove the said bill to be true, certain, and sufficient in the law to be answered unto by the said defendant, and that the answer of the said defendant is very uncertain, evasive, and insufficient in the law to be replied unto by this repliant; without this, that any other matter or thing in the said answer contained material or effectual in the law to be replied unto and not herein and hereby well and sufficiently replied unto, confessed, or avoided, traversed or denied, is true, all which matters and things this repliant is ready to aver, maintain, and prove as this honorable court shall direct, and humbly pray as in and by the said bill he has already prayed.

MATHER & TAFT,
Solicitor and Counsel for the Complainant.

Indorsed: Filed Nov. 16, 1859.

WM. H. BRADLEY, *Clk.*

109 On this day, to wit, the 3d day of October, A. D. 1864, the following stipulations were filed in said entitled cause, to wit:

Stipulation as to moneys substitute for injunction.

In the circuit court of the United States for the northern district of Illinois, in chancery.

L. C. PAINE FREER, administrator de bonis non of Jeremiah Price, deceased,
vs.
EPAPHRO SEYMOUR, (since deceased,) HORATIO Seymour, Origen S. Seymour, executors of the last will and testament of Henry Seymour, deceased, and the said Horatio Seymour and others, heirs and devisees of said Henry Seymour, deceased.

It is hereby stipulated and agreed by and between the undersigned attorneys in the above entitled cause, that the sum of ten thousand three hundred and forty-seven dollars and sixty-nine cents, ($10,347 69,) being moneys originally received by John High, junior, in his lifetime on sale of a portion of the lands touching
110 which the bill was filed by complainant in said suit, and which, since his decease, hitherto has remained in the hands of Mr. E. Blackman as his executor, and which it is proposed now to place in the hands of A. C. Coventry, esq., the attorney for the executors, heirs, and devisees of Henry Seymour, deceased, who with the consent of the complainant is to deposit the same where it may draw interest for the time being and until the termination of the above suit shall declare and make known the ultimate destination of said moneys and to whom payable.

Now, therefore, the object of the present stipulation is to show that said moneys have hitherto been retained and kept back by mutual agreement of the parties and their attorneys, as a substitute for and equivalent in security to the complainant, instead of an injunction prayed for in the bill to restrain the payment over of the same to the defendants, or any of them.

And it is further stipulated by and between the same parties that said moneys shall so remain within the control of this court for the same purpose, and not to be paid over to the defendants, or any of them, unless, on the termination of this suit, it shall so be required judicially.

111 Dated Dec. 7th, 1859.

A. C. COVENTRY,
Sol. for Defendants.
MATHER & TAFT,
Sol'rs for Compl't.

Indorsed: Filed Oct. 3d, 1864.

WM. H. BRADLEY, *Cl'k.*

Stipulation as to payments, &c.

In the circuit court of the United States for the northern district of Illinois.

L. C. PAINE FREER, administrator de bonis non of Jeremiah Price, deceased,
vs.
HORATIO SEYMOUR *et al.*, executors, together with the heirs of Henry Seymour, dec'd.

It is hereby stipulated and agreed, on the part of the several defendants in the above cause, that the statement in the bill of complaint in this cause sworn to by John High, jr., in his lifetime, who, as surviving administrator of Jeremiah Price, deceased, filed the original bill in this cause in the Cook county court of common pleas, before Hon. John M. Wilson, the judge of said court, in chan-
112 cery sitting, and which cause was removed to this court by the defendants on petition and motion founded on the statute of the United States touching the removal of causes from a State court, when one party was a non-resident or non-residents of the State in which the suit was brought; that is to say, the statement of the tenor and to the effect that the sum of twelve thousand three hundred and sixty-six 67-100 dollars ($12,366 67-100) had been paid by said John High, jr., to, and distributed among, the children and heirs and devisees of Henry Seymour, deceased, being part and parcel of the moneys received by said John High, jr., from proceeds of sales of real estate mentioned in the said bill of complaint, is not to be controverted or denied on the trial or argument of this cause; but said statement is to be considered and treated as a matter admitted to be true by the defendants, and that no further proof need be thereof given.

And it is also admitted, on the part of the complainants, that in month of May, A. D. 1840, at the expiration of the time for sale stated in the contract between Jeremiah Price and Henry Seymour, mentioned in the pleadings in this cause, the lands purchased under said contract were unsaleable, and that it is entirely uncertain
113 how much they could have been sold for, or whether they would even have brought enough to repay the original investment and interest.

Dated June 21st, 1864.

MATHER & TAFT,
Sol's and Counsel for Complainant.
COVENTRY & ROUNTREE,
Sol. for Def'ts.

Indorsed: Filed Oct. 3d, 1864.

WM. H. BRADLEY, *Cl'k.*

Stipulation as to Exhibits B and C.

In the circuit court of United States, northern district of Illinois.
Chancery.

L. C. P. FREER, administrator de bonis non, &c.
vs.
HORATIO SEYMOUR *et al.*

The exhibits marked B and C, annexed to bill of complaint in above-entitled cause, being the exhibits which show the costs of the original investment, and the expenses paid by Jeremiah Price on such original investment, and the am'ts paid out by John High, jr., down to the time of the filing of said bill of complaint on such original investment, have been compared with the original receipts, and found correct.

114 Exhibit B shows the cost and situation of the several tracts of land. Exhibit C shows expenses and taxes paid.

Chicago, February 4th, 1860.

A. C. COVENTRY,
Sol. for Def'ts.

Indorsed: Filed Oct. 3d, 1864.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the 4th day of October, A. D. 1864, in the record of the proceedings of said court in said entitled cause is the following entry, to wit:

LEMUEL C. P. FREER, administrator of Jeremiah Price, deceased,
vs
HORATIO SEYMOUR *et al.*, executors of Henry Seymour, deceased.
} Chancery.

Now come the parties, by their respective solicitors, and by agreement this cause is set down for hearing upon the bill, answers, replications, and proof on file herein.

On this day, to wit, the 10th day of November, A. D. 1864, the following stipulation in said entitled cause was filed in said clerk's office, in the words and figures following, to wit:

115 *Stipulation as to copy of Exhibit A.*

C. court of U. S., nor. dist. of Illinois.

L. C. P. FREER, ad'r de bonis non of JEREMIAH Price, deceased,
vs.
HORATIO SEYMOUR, *et al.*, ex'rs, &c., of HENRY Seymour, deceased.

This copy of contract may be read in evidence on hearing, as if it was the original.

COVENTRY.

Copy of original contract, Exhibit A.

This agreement, made this 9th day of May, 1835, between Jeremiah Price, of Chicago, and Henry Seymour, of Utica, witnesseth: That the said Jeremiah covenants and agrees that he will forthwith devote his time and attention and exercise his best judgment in exploring and purchasing land to an amount not exceeding five thous-
116 and dollars, in the States of Illinois, Indiana, and Ohio, and in the Territories of Michigan and Wisconsin, or in such of them as he may find most advantageous to the interest of said Henry, in whose name the contracts and conveyances shall be made and taken. It is understood that the purchases are to be made after full and careful searches and explorations for the most profitable investments on or near the sites or expected sites of towns or places of business, and in general, in tracts of ground of moderate extent; and the said Henry covenants on his part to furnish five thousand dollars for the above contemplated purchases, and that the lands purchased as aforesaid shall be sold within five years from the present time, and out of the profits which may be made by such purchase and sale, after charging to the investment the taxes and other charges, if any, together with seven per cent. interest on the investment, and the charges last mentioned, there shall be paid to the said Jeremiah one-half of the same, which one-half of the profits shall be in full of his services and expenses of every kind in making the
117 aforesaid explorations, searches, and in doing all such other things as may be requisite and proper in making the contemplated purchases. It is understood that the purchases shall be made during the present year, and that no payment for services or expenses will be made by said Henry except from the profits made as aforesaid.

JEREMIAH PRICE.
HENRY SEYMOUR.

Left for record 17th Oct., 1837; recorded 24th Oct., 1837, book V Deeds, page 306, Cook county.

STATE OF ILLINOIS, *County of Cook, ss:*

I, William L. Church, clerk of the circuit court and ex officio recorder in and for said county, in the State aforesaid, do hereby certify that the annexed is a true copy of a certain instrument filed in my office on the seventeenth day of October, A. D. 1837, and recorded in book No. V of deeds, on page 306, the parties to the same being J. Price of the first part and H. Seymour of the second part.

In testimony whereof I have hereunto set my hand and affixed the seal of our said court, at Chicago, this 9th day of November, A. D. 1864.

[SEAL.]

WM. L. CHURCH,
Clerk of the Circuit Court, and ex officio Recorder of Cook County.

5-cent revenue stamp.

118 On this day, to wit, the 10th day of November, A. D. 1864, in the record of the proceedings of said court in said entitled cause is the following entry, to wit:

LEMUEL C. P. FREER, administrator of JEREMIAH PRICE, deceased,
vs.
HORATIO SEYMOUR, EPAHHRO SEYMOUR, and Origen S. Seymour, executors of Henry Seymour, deceased, and Horatio Seymour, John F. Seymour, Rutger B. Miller and Mary F. Miller, his wife, and Edmund A. Wetmore, her trustee, Edward F. Shonnard and Sophia F., his wife, Ledyard Linklaen and Helen C., his wife, and Roscoe Conkling and Julia C., his wife. } Chancery.

This cause having been heretofore set down for hearing, now come the parties, by their solicitors, and after hearing the arguments of counsel until the hour of adjournment, without concluding the same, the further hearing is postponed until to-morrow morning.

119 On this day, to wit, the 11th day of November, A. D. 1864, in the record of the proceedings of said court in chancery in said entitled cause is made the following entry, to wit:

LEMUEL C. P. FREER, administrator of JEREMIAH PRICE, deceased,
vs.
HORATIO SEYMOUR, EPAPHRO SEYMOUR, and Origen S. Seymour, executors of Henry Seymour, deceased, and Horatio Seymour, John F. Seymour, Rutger B. Miller and Mary F. Miller, his wife, and Edmud A. Witmore, her trustee, Edwad F. Shonnard and Sophia, his wife, Ledyard Linklaen and Helen C., his wife, and Roscoe Conkling and Julia C., his wife. } Chancery.

Now come again the parties, by their solicitors, and after proceeding in the arguments of counsel until the hour of adjournment, without concluding the same, the further hearing is postponed until Tuesday morning next.

120 On this day, to wit, the 15th day of November, A. D. 1864, in the record of the proceedings of said court in chancery in said entitled cause is the following entry, to wit:

LEMUEL C. P. FREER, administrator of JEREMIAH Price, deceased,
vs.
HORATIO SEYMOUR, EPAPHRO SEYMOUR, and ORIGEN Seymour, executors of Henry Seymour, deceased, and Horatio Seymour, John F. Seymour, Rutger B. Miller and Mary F. Miller, his wife, and Edmund A. Wetmore, her trustee, Edward F. Shonnard and Sophia, his wife, Ledyard Lincklaen and Helen C., his wife, and Roscoe Conkling and Julia C., his wife. } Chancery.

Now come again the parties by their solicitors, and the court, after hearing the concluding arguments of counsel, and not being sufficiently advised in the premises, takes this cause under advisement.

121 On this day, to wit, the 13th day of October, A. D. 1865, in the record of the proceedings of said court in chancery in said entitled cause is the following entry, to wit:

1st decree.

L. C. P. FREER, administrator de bonis non of Jeremiah Price, deceased,
vs.
HORATIO SEYMOUR and ORIGEN S. SEYMOUR, survivors of Epaphro Seymour, as executors of the last will and testament of Henry Seymour, deceased, and the said Horatio Seymour, John F. Seymour, Rutger P. Miller and Mary F., his wife, and Edmund A. Wetmore, her trustee, Edward F. Shonnard and Sophia A., his wife, Ledyard Lincklaen, Helen C., his wife, Roscoe Conkling and Julia C., his wife, as heirs and devisees of said Henry Seymour, deceased. } Chancery.

This cause having heretofore been brought on to be heard upon the pleadings filed, and certain stipulations signed by the solicitors for the parties respectively, standing in the place of proofs therein, and the said pleadings and proofs having been read, and Messrs. Mather & Taft, of counsel for complainant, and Messrs. Hoyne, Miller & Coventry, of counsel for the defendants, having been heard, and
122 the court having duly considered the said pleadings, stipulations, proofs, and arguments:

It is ordered, adjudged, and decreed that Jeremiah Price in his lifetime, and at the time of his decease, by virtue of the contract of May ninth, A. D. eighteen hundred and thirty-five, made and entered into between him and Henry Seymour, since deceased, as appearing in the bill filed in this cause, was entitled as an equal copartner in the profits to one equal half part of the profits made, or to be made

from the sale of the lands and real estate specified in a schedule annexed to said bill of complaint, and marked "Exhibit B," being two thousand four hundred and forty and twenty-two one hundredths acres, situate in the counties of Cook, Will, Du Page, and Grundy, in the State of Illinois, besides several town lots in Joliet village in Will county referred to in the pleadings in said cause, after deducting and returning to the heirs or personal representatives of said Henry Seymour, deceased, from the proceeds of said sales, the sum of five thousand dollars advanced by him in the purchase of
123 said lands and real estate, with the taxes and other charges incurred, together with interest thereon at seven per cent. from the date of the several advances so made.

That said lands and real estate having been purchased by said Jeremiah Price as a speculative adventure or investment on joint account of himself and said Seymour, according to the terms of said contract, and the title thereto vested in the said Henry Seymour in his lifetime; and a part thereof having been sold and conveyed by the heirs-at-law of said Henry Seymour, since his decease, a larger proportion thereof remaining yet unsold; the said sales so made as aforesaid, and the sales remaining yet to be made, are to be deemed and taken as made, and to be made, on joint account of the estate of said Henry Seymour, deceased, and of the estate of the said Jeremiah Price, deceased; the heirs or personal representatives of Henry Seymour, deceased, being entitled, besides return of capital advanced as aforesaid, with taxes, charges, and interest added thereto, to
124 one equal half part of the clear profits remaining over from proceeds of sales, made and to be made, and the complainants, as administrator de bonis non of the said Jeremiah Price, deceased, being entitled to the other equal half of the clear profits aforesaid, as personal estate of the said Price, in course of administration, which sales yet to be made this court will order and provide for in detail on the coming in and confirmation of the master's report on the accounts of the parties to this suit hereinafter provided for.

And it is further ordered, adjudged, and decreed that all the accounts touching and concerning the investment and purchase of said lands and real estate, and the sale thereof, so far as the same has already progressed; the advances made by the said Henry Seymour in his lifetime, or by his heirs or personal representatives, since his decease, for taxes, interest, and other charges be referred to J. Tildon Moulton, esq., one of the masters in chancery of this court; said master is hereby directed to state said accounts in such manner as to show in aggregate the cost of said lands and real estate, in-
125 cluding the moneys advanced therefor by said Henry Seymour in his lifetime, or any of the defendants, with taxes and other charges and interest at the rate above specified; also the account of sales made and moneys received therefor, and how disposed of, and to whom chargeable specifying, the lands sold, at what price, and how and when paid, and in case of any sales which were not fully completed, such report must show the disposal made of the contracts for sale as well as the proceeds so far as realized, with all costs

and expenses incident thereto or growing out thereof, as well as the disposal made of the premises, in case of any sale or sales which did not go into full effect. The said master is also directed to consider and allow the stipulations on file made by the parties or their solicitors, and standing as proofs, and the pleadings in the cause, so far as they contain admissions of the parties, instead of proofs, and he will also take such proofs, in addition thereto, as either party may offer
touching any matter or thing justly appertaining to a full and
126 perfect adjustment of the proper accounts relative to said lands and real estate, or the sales thereof made or any claim whatever justly due to or from either party touching said lands and realty, or the transactions of the parties therein or relative thereto. And said master is directed to report with all convenient speed.

On this day, to wit, the 28th day of July, A. D. 1866, the report of the master was filed in said entitled cause, which said report together with the Exhibits "A," "B," "C," "D," and "E" is in the words and figures following, to wit:

127 *Master's report.*

In the circuit court of the United States of America within and for the northern distict of Illinois, in chancery

LEMUEL C. P. FREER, adm. de bonis of Jeremiah Price, deceased,
vs.
HORATIO SEYMOUR, ORIGEN S. SEYMOUR, surv. of Epaphro Seymour, ex. of Henry Seymour, *et als.*
} Report of master.

Pursuant to an order made by the said court in the above-entitled cause, on the thirteenth day of October, in the year of our Lord one thousand eight hundred and sixty-five, wherein and whereby, among other things, it was referred to J. Tilden Moulton, a master in chancery of said court, to take and state an account of the progress and present condition of the funds and lands, arising under the contract named therein, and report the same to the court, I, the said J. Tilden Moulton, do hereby report that on the fourth day of December, in the year of our Lord one thousand eight hundred sixty-five, and
on many days between that day and the day of the filing
128 hereof, I was attended by Mr. Mather, as solicitor for the complainant, and by Mr. Coventry, as solicitor for respondents; that Mr. Coventry was examined as a witness, and made the statements of account, &c., and furnished the exhibits referred to in his said examination, and it was agreed by the parties that the accounts are all correct as they there appear, and should be allowed; that interest should be reckoned upon all advances made by or in right of the parties respondent, as set forth in the bill of complaint, from the time respectively of such advances to the time that the amount received by the said respondents is equal to the amount of such ad-

vances and such interest; that the accumulating fund in the hands of Mr. Coventry sustained large loss by depreciation of the currency in which it was received and retained; that therefore, without examining the amounts of such loss, the interest should cease altogether at the time said advances and interest became paid as above mentioned, and no other interest than that above named shall be
129 reckoned to either party.

I was also furnished with exhibits F, G, and H, which are herewith filed; that I have examined the bill of complaint, answer, and other papers on file, referred to in said decretal order, and the proofs introduced; and that there was advanced the several sums as in the statement following. I have reckoned interest thereon from the date of the advance of each sum to the ninth day of May, A. D. 1857, as appears in said statement, as follows:

1835.			
May 9.	Cash for investment	$5,000 00	
	Interest at 7 p'r c't, 22 years	7,700 00	
			$12,700 00
1841.			
Dec. 24.	Cash sent by draft from Utica	97 25	
	Interest, 15 years, 4½ months	104 67	
			201 92
1843.			
Feb'y 20.	Cash sent by draft	80 00	
	Int. 14 y'rs, 2 mo's, 19 d's	79 64	
			159 64
Dec. 13.	Cash sent by draft	32 00	
	Int. 13 y'rs, 4 mo's, 26 d'ys	30 04	
			62 04
1845.			
Apr. 13.	Cash sent by draft or check	100 00	
	Int. 12 y'rs, 26 d'ys	84 50	
			184 50
Dec. 26.	Cash sent by check	20 00	
	Int., 11 y'rs, 4 mo's, 13 d's	15 91	
			35 91
1847.			
Feb'y 22.	Cash by check from Utica	121 41	
	Int., 10 y'rs, 2 mo's, 17 d's	86 78	
			208 19
130 1848.			
Apr. 27.	Cash by check from Utica	83 41	
	Int., 9 y'rs, 12 d's	52 74	
			136 15
Nov. 12.	Cash from Utica by check	96 00	
	Int., 8 y'rs, 5 mo's, 17 d's	56 70	
			152 70
	Tax refunded	3 40	
	Int	2 00	
			5 40

1850.			
Jan'y 24.	Cash from Utica by check····	$100 00	
	Int., 7 y'rs, 3 mo's, 9 d's····	50 92	
			$150 92
1852.			
June 25.	Cash from Utica by check····	173 82	
	Int., 4 y'rs, 10½ mo's·····	59 32	
			233 14
1853.			
May 30.	Cash by check from Utica····	185 34	
	Int., 3 y'rs, 11 mo's, 9 d's····	51 17	
			236 51
July 21.	Cash by check from Utica····	200 24	
	Int., 8 y'rs, 9 mo's, 18 d's····	53 29	
			253 53
1854.			
Apr. 19.	Cash from Utica by check····	447 35	
	Int., 3 y'rs, 20 d's·····	95 68	
			543 43
Apr. 29.	Cash sent on by check from Utica ···· ·····	66 20	
	Int., 3 y's, 10 d's·····	13 43	
			79 63
Dec. 4.	Cash to Mr. High by check····	129 20	
	Int., 2 y'rs, 5 mo's, 4 d's····	21 94	
			151 14
1855.			
March 8.	Cash to Mr. High by check····	70 03	
	Int., 2 y'rs, 2 mo's, 1 d·····	10 61	
			80 64
Apr. 19.	Cash to Mr. High by check····	246 96	
	Int., 2 y'rs, 20 d's·····	35 53	
			282 49
1851.			
May 21.	Cash to Mr. Price by check from Utica, (omitted in place)····	93 31	
131	Int., 5 y'rs, 11 mo's. 18 d's····	38 98	
			132 29
			16,137 57
	The pleadings show that Mr. High had paid *paid* prior to filing bill·····	12,366 67	
1857.			
May 9.	Sent p'r ac·····	8,526 00	
			20,892 67
	Deduct therefrom am't advanced and int., and there remains ·····		4,755 11
	Add amount as p'r Exhibit E·····		6,715 19

Add amount rec'd by A. Coventry, as p'r Exhibit A		$28,977 79
		40,448 08
Deduct Coventry's expense on ac. of land expenses	$7,878 76	
" H. Seymour's ac., Exhibit B	3,816 75	
" A. Coventry's com., Exhibit D	1,448 86	
		13,144 37
And there remains		27,303 71

Mather and Taft, from the ex'c'r of Mr. High, from money collected by him, and not otherwise accounted for, $500 00.

I find that the last two amounts, being in the aggregate $27,803 71, are not profits on land sales to be divided between the parties to this cause under the said decretal order.

132 From the testimony taken before me, it appears that of the lands purchased by Jeremiah Price, in his lifetime, under the contract set forth in the bill of complaint filed in this cause, of which lands a full and complete schedule is attached to said complainant's bill, and marked Exhibit B, giving the date of each purchase, the description and location of the several parcels, mainly from government surveys, the price paid for each parcel, and the number of acres, the following parcels only have been hitherto sold and conveyed to purchasers who were not parties in this cause, having been paid for by them, and purchase money entered in the accompanying accounts, viz:

1. To John Wentworth.—E ½ of N. E. ¼ sec. 18, T. 38 N., R. 18 E.—80 acres.

2. To John W. Davis.—E. ½ S. W. ¼ sec. 36, T. 39 N., R. 13 E.—80 acres; also the two east blocks in the N. ½ of S. E. ¼ sec. 12, T. 39 N., R. 13 E., which are not included in said Davis mortgage to H. Seymour *et al*, dated Feb. 21, 1857, made an exhibit, and

133 marked Exhibit F.

The residue of said last mentioned premises, part and parcel of said N. ½ of S. E. ¼ of sec. 12, T. 39 N., R. 13 E., as described in said Davis mortgage last mentioned above, (Exhibit F,) and also the E. ½ of S. W. ¼, sec. 6, T. 38 N., R. 14 E., described in said Davis other mortgage, dated Feb. 21, 1857, as shown upon Exhibit G in this cause, have come back to the same land fund by foreclosure of said several mortgages given for a part of the purchase money and by sales thereupon, and were upon such sales bid off and conveyed by Ira Scott, one of the masters in chancery of the superior court of Chicago, to John F. Seymour, one of the defendants in this cause, in pursuance and in execution of the decrees of foreclosure respectively.

With the exception, therefore, of the said two several first above-named parcels of 80 acres each, and the two several blocks which, by compromise with John W. Davis, were released to him in consideration of what he had paid, all the lands mentioned in the
134 "Schedule B" aforesaid remain to be disposed of as the decree in this cause shall direct, precisely as when the bill in this cause was filed. Except only that the two parcels which came back to the land fund aforesaid by purchase on foreclosure sales as aforesaid are now held in the name of John F. Seymour, one of the heirs and devisees of Henry Seymour deceased. But it will be seen it is in evidence that said John F. Seymour has never paid anything to the fund in this cause on said purchases, and all the expense of foreclosure and sale and taxes since, as well as before, and the recording of his deeds from said master therefor, have been charged in the accounts herewith submitted in this cause, from all which it clearly appears that said John F. Seymour holds the title to said land so by him purchased subject to the same trust by which the lands aforesaid, with the residue of said lands, were at first held in trust by Henry Seymour, deceased, in his lifetime, and which descended on his death subject to the same trust.

J. T. MOULTON,
Master in Chancery, U. S. Cir. Court, N. Dist. of Illinois.

5-ct. rev. stp., cancelled.

135 All which is respectfully submitted.

Masters fees, 30 days, &c $150 00

Alexander Coventry was by me first duly sworn to testify the truth, the whole truth, and nothing but the truth in the said cause, and did thereupon depose and say: I paid out on account of the lands, &c.:

1858.—Jan.	7.	Six drafts to the order of J. F. Seymour, H. Seymour, Mrs. Julia Conklin, E. A. Wetmore, trustee of Mrs. Miller, Mrs. Helene C. Linklaen, Mrs. Sophia H. Shonard, each $321 00	$1,926	00
		Exchange on same	67	50
1858.—Feb.	10.	6 drafts as above $858 45 each	5,150	70
		Exchange on same	159	30
1858.—Mar.	28.	Taxes on S. W. qr., sec. 2, T. 33, R. 11 E., Dupage co	32	11
		Valette & Cady for paying same	1	50
		Cook co. state and county taxes	230	17
		Premium on gold on same	2	30
1858.—Apr.	1.	Will Co. S. & C. taxes	106	83
		Joliet City taxes	11	64
136		Grundy co. S. & C. taxes	42	44
1859.—May	21.	Dupage co. taxes $23 41; premium on gold 40 c	23	81

		Cook co. taxes $336 82; premium on gold $5 12	$341 94
1859.—May	28.	Will co. taxes $90 40; premium on gold $1 80	92 20
1859.—June	3.	Grundy co.	39 46
1859.—Oct.	1.	Telegram to Utica	2 00
1859.—Nov.	29.	Six drafts as above, $110 80 each, exchange on same $13 56	678 36
1860.—March	8.	Dupage co. taxes, $14 06; Valette & Cady $1 94	16 00
		Town of Lake, Cook co., taxes $113 80; premium on gold $1 16	114 96
1860.—April	12.	Grundy co. taxes and expense of paying same	45 00
1860.—April	21.	Will co. taxes of 1858–9, $106 85; Joliet City taxes of 1858–9, $76 48; expense of paying same $5 00	188 33
1860.—May	11.	Six drafts as above, $146 86 each, exchange on same $13 21	894 37
			1,290 69
		Amount brought forward	1,290 69
1860.—May	20.	Bal. Cook co. S. & Co. taxes $157 43; premium on gold $2 38	159 81
1861.—Feb.	21.	Joliet City taxes $5 78; expense paying same $1 50	7 28
1861.—March	1.	Special assessment on lots 4 and 5, bl. 80, sch. sec. add to Joliet	94
1861.—April	3.	Town of Lake, Cook co., S. & C. taxes $87 14; premium on gold $3 00	90 14
137			
1861.—June	4.	Grundy co. taxes $53 20; Will co. taxes $96 52; expenses of paying both $5 00	154 72
1861.—July	13.	Dupage co. taxes $14 10; expenses of paying same $1 00	15 10
		Cook co. taxes $242 16; premium on gold $1 71	243 87
1861.—Oct.	6.	Abstract land mort. bought by J. W. Davis	35 00
1861.—Dec.	5.	John B. King for redemption of cert's of land mort. by J. W. Davis, (sec. 12, 39, 13 E.)	423 20
		Taxes for 1859 and '60 on sec. 4, 29, 13 E., mort. by Davis	22 20
1862.—April	24.	Joliet City taxes $8 54; Parks & Elwood paying same, $2 00	10 54
1862.—May	1.	Dupage co., S. & Co. taxes and expense	13 35

1862.—May	31.	Cook co., S. & C. taxes $435 87; premium on gold $13 07	$448	94
		Bill for carriage used in going out to look after drainage	15	00
1862.—June	6.	Grundy and Will co., S. & C. taxes $121 21; premium on gold $4 84	126	05
1863.—Feb.	26.	J. Murey for redemption of cert's on the E. ½ S. W. qr. sec. 6, 38, 14	134	44
		Being sold by John High, jr., in his lifetime, to J. W. Davis, and to protect the estate it was necessary to pay it.		
1863.—March	24.	Joliet City taxes	7	79
		Cook co., S. & C. taxes	495	87
		Drainage sec. 22, 38, 13	200	00
1863.—Nov.	5.	Drainage assess. W. ½ N. W. qr. sec. 32, 41, 14	29	90
1864.—Nov.	5.	Cook co., S. & C. taxes	487	07
1865.—April	13.	Grundy co. taxes	57	52
138 Aug.	3.	Livery bills in examination of lands, several times	21	00
Oct.	14.	Cook co. taxes	858	72
			5,259	14
			5,259	14
1865.—Dec.	18.	Ira Scott, master, for 2 deeds on mortgage foreclosure, $20; stamps on same, $25 50	45	50
Dec.	19.	Certified copies of mortgage from Peyton to H. S.	2	00
		Grundy co., S. and co. taxes of 1858	39	46
1863.—Mar.	14.	Do ..... do 1862	52	30
1864.—Mar.	29.	Do ..... do 1863	46	48
1863.—April	9.	Will co ..... do 1862	103	03
1864.—Mar.	29.	Joliet city ..... do 1863	7	56
Apr.	21.	Dupage co ..... do 1863	17	92
		Will co ..... do 1863	116	08
1865.—Apr.	14.	Dupage co ..... do 1864	19	82
1866.—Jan.	26.	Co. clerk for cancelling tax certs. on Davis subdiv. of sec. 12, 29, 13, for tax sale while the property was held by Davis, before the mort. to H. S. became due	4	00
Jan.	31.	G. D. A. Park's draft for am't p'd by him for Joliet City and Will co. taxes for 1864 and '65	604	93
Feb.	1.	Recording 2 deeds from Ira Scott, master	5	00

	Feb. 7.	Telegram irom Utica	$1 90
1859.—Sept.	29.	Coventry & Rountree draw deeds and mort's with Davis, and special re-	
139		lease of lots in sec. 13, 39, 13	20 00
		retainer in fil. claim *vs.* cit. of John High, jr., in pro. court and service, settling with ex'r	75 00
		in matter of foreclosure of mort. *vs.* Davis & Parsons, in sec. 12, 39, 13	50 00
		in matter of foreclosure *vs.* Davis in E. ½ S.W. qr., 12, 38, 14	50 00
		services in fore. mort. *vs.* D. & P. fil. bill, tak'g proofs, obtaining decree, mak. sale, obt. dec., am't of da., $23,580; 10 pr. ct. on first, $150; 5 p. c. on next, $25 00; and 2½ on balance	663 25
		same serv. *vs.* Davis, $13,335	407 12
		Ira Scott, master's fees *vs.* D. & P., $166 87; clerk's costs in same, $26 25	193 12
		Ira Scott, master's fees *vs.* Davis, $77 25; clerk's cost in same, $17 90	95 15
			7,878 76
		I have received the sum of (as pr. Exhibit A)	28,977 79
		H. Seymour and others received the sum of (as pr. Exhibit E)	6,715 19
			35,692 98
		Horatio Seymour paid out (as pr. Exhibit B) the sum of	3,816 75
		I claim (as pr. Exhibit D) the sum of	1,448 86

140 The east half of the northeast quarter of section 18, township 38, range 15, was sold to John Wentworth by Mr. High, for $3,200 interest; the amount of which sale has been fully paid, and the payments have been all made, as shown in the accounts rendered by Mr. High and myself. The east ½ of the S.W. ¼ of sec. 36, T. 39 R. 13, was sold by Mr. High to John W. Davis for $18,000. The payments for this sale have all been made, and are accounted for in the accounts of Mr. High and of the estate of Henry Seymour, that have been filed in this cause as payments made by Mr. Davis and Mr. Peyton on account of this piece of land.

The undivided ½ of the N. ½ of the S.E. qr. of sec. 12, T. 39, R. 13 E., as set off to the estate of Henry Seymour by a decree in partition,

wherein the estate of Jeremiah Price, deceased, was party defendant, in the Cook county court of common pleas, was sold to John W. Davis and Usher Parsons, for $48,000; subsequently Mr. Parsons, by the consent of Mr. High and myself, transferred his interest to Mr. Davis. Mr. Davis having made several payments, to enable him to carry out his contract, obtained from the estate of
141 Henry Seymour a release of the two east blocks in the above-described premises. These releases were made at separate times. The amount that Mr. Davis paid on account of this purchase has been set forth in the accounts of Mr. High and myself, herewith rendered. Mr. Davis executed to the estate of Henry Seymour a mortgage to secure the payment of the purchase money to become due on his agreement, which mortgage was subsequently forclosed in the superior court of the city of Chicago, on which foreclosure a decree of sale was entered, and a sale was made in pursuance of such decree, of the property that had not been released from the mortgage—that is, the two blocks before mentioned. At the sale under this mortgage foreclosure, the property sold was bought in by Mr. John F. Seymour, and subsequently a deed was executed by Ira Scott, one of the masters in chancery of said court to said Seymour as such purchaser, said Seymour now claims to hold the land, as I am informed, individually, as his own property. The exact
142 amount which he bid for the same, at the time of the sale, I am not now able to state without reference to the records, but it will appear from the exhibits filed in this cause. There is a balance due from Mr. Davis to the estate of Henry Seymour on this decree above the amount of sale, which has never been satisfied.

By compl'ts' counsel:

1 int. Did Mr. John F. Seymour, the purchaser, pay any money on said purchase or therefor, and is he one of the defendants in this cause?

Ans. I receipted to Mr. Scott that I had received of him the purchase money on that sale on behalf of the complainants. I have never received the money from Mr. Seymour, nor did Mr. Scott, except by my receipt, nor has the amount of the bid been entered in any of the accounts rendered by me. Mr. John F. Seymour, the purchaser, is one of the defendants in this cause.

The E. ½ of the S. W. qr. of sec. 6, town. 38, R. 14, was sold by Mr. High to John W. Davis subsequent to the filing of the bill in this cause, for the sum of $16,000, part cash and part on time.
143 Subsequent to the purchase a mortgage was given by Mr. Davis to secure the payment of the deferred payments and interest. Mr. Davis failing to meet the payment called for by the mortgage, the same was foreclosed in the superior court of the city of Chicago, under which foreclosure a sale was made by Ira Scott, esq., one of the masters in chancery of said court, to John F. Seymour, before mentioned, and a conveyance made to him. The proceedings in relation to the purchase money were precisely the same as in the other case. I was solicitor for the estate of Henry Seymour in both foreclosure suits.

JUNE 29, 1866.

Resumed the examination pursuant to adjournment.

The annexed account, marked Exhibit C, is a copy of an account taken from Mr. High's books, showing his transactions intermediate between the time of the filing of the bill in this cause on Feb'y 3d, 1857, and the period of his decease, when I, as solicitor and attorney for the defendants in this cause, settled the account with Mr. Blackman, the executor of Mr. High's estate; and he thereupon paid me, as
144 the balance remaining in Mr. High's hands, as agent for the Seymours, the sum of $10,347 69, which is rendered in my account of moneys received by the estate of Henry Seymour. That balance I presume and believe to be substantially correct, though needing the following addenda by way of explanation:

The amount admitted to have been in Mr. High's hands on the filing of the bill was $18,488 82.

The amount I received was $10,347 69.

Mr. Blackman had also paid to Messrs. Mather & Taft, sol'rs for Mr. Price's estate, which they admit to be justly chargeable to said Price's estate, the sum of $500.

Mr. High's debtor account, marked Exhibit C, foots		$10,414 61
His opposite credit		2,770 20
Bal. is		7,644 41
		$18,492 10
Deduct from this the first item in Mr. High's ac., 3 00, which seems not properly chargeable		3 00
		18,489 10

The difference between this and $18,488 82 is but 28 cts., showing substantially the correctness as above stated. It is also to be noted, that of the amount of $10,347 69 so paid by Mr. Blackman to
145 me, I deposited the sum of $2,000 with Messrs. Mather & Taft, solicitors and attorneys for the complainant in this cause, which they agree is justly chargeable on their accounting as so much money for which the complainant, as representative of said Price's estate, is debtor to the funds concerned in this suit. This arrangement was also made, as I understand, with the knowledge and consent of the plaintiff. I hold the bond of Messrs. Mather & Taft for said $2,000, which represents substantially the same as above stated, and which was executed by them, and taken by me, at the request of complainant in this cause.

A. C. COVENTRY.

146 *Exhibit A.—J. T. M.*

Estate of Henry Seymour in ac. with A. C. Coventry:

1857.		
Nov. 13.	By cash rec'd of E. Blackman on acc't John Wentworth contract	$755 20
Dec. 30.	By cash of Messrs. Watson, Tower & Co., on acc't J. W. Davis's purchase at Brighton	1,991 25
1858.		
Jan'y 26.	By cash rec'd on J. W. Davis's purchase in sec. 12, T. 39, R. 13 E	10,620 00
Dec. 1.	By cash rec'd from E. Blackman, on acc't Wentworth purchase	716 00
1859.		
Jan'y 11.	By cash rec'd from Watson, Tower & Co., on acc. payment from J. W. Davis on Brighton purchase, being E. half of S. W. quarter 36, T. 39, range 13 E	1,890 00
Nov. 29.	By cash rec'd this day from John Wentworth, being last payment on his purchase	678 40
Dec. 7.	By cash rec'd this day from E. Blackman, as executor of estate of John High, jr., on acc't payments made to said High by J. W. Davis, on his purchase from estate of Henry Seymour	10,347 69
1860.		
May 11.	By cash rec'd from Watson, Tower & Co., on acc. of Davis's purchase in sec. 36, T. 39, R. 13, known as the "Brighton purchase."	1,785 75
1861		
M'ch 12.	By cash rec'd for rent of land in sec. 28, T. 39, R. 14 E	10 00
147		28,794 29
1864.		
Feb'y 11.	By cash from Gunderson for hay	25 50
Mar.	By cash from Espert for hay	5 00
Apr. 13.	By cash from Espert for hay	10 00
Aug. 10.	By cash from Crighton	10 00
1865.		
Jan'y 25.	By Espert	10 00
Feb'y 16.	By Kelly	20 00
Mar. 15.	By Mares	40 00
Mar. 20.	By Daly	20 00
		140 50
	Within am't	28,794 29
		28,934 79
1866. J'ly 29.	By cash rent of hay land	20 00
1858. Dec. 1.	By cash interest	18 00
	Espert for hay	5 00
		28,977 79

148 *Exhibit B.—J. T. M.*

Statement of the disbursements made by the estate of Henry Seymour, and paid as is set forth in the following memorandum on account of Illinois investments made by the late Henry Seymour, under memorandum of agreement with Jeremiah Price, deceased, of date May 25th, 1835.

1837. Dec. 27	To amount paid J. W. Strode for searches	$50 00
1847. May	To expenses of J. F. Seymour and E. Shonnard to Chicago	82 35
1846. Jan'y 5	To postage to J. Price, 10 c.; Feb'y 11, do. 10 c	20
1855. May 10	To telegrams	1 17
April 5	To expenses of M. S. Miller to Chicago and services	100 00
1856. Oct. 20	To express	50
1857. April 13	To telegrams	2 34
May 30	To telegrams	6 66
Aug. 7	To J. F. Seymour expenses to Chicago and time	500 00
1858. Jan'y 17	To telegrams	1 27
May 22	To M. S. Miller, expenses and time at Chicago	101 02
May 22	To express	75
1859. Sept.	To postage and telegrams	19 19
Oct. 10	To postage	75
1861. Oct. 10	To H. Seymour expenses at Chicago	200 00
1864. Nov. 28	To J. F. Seymour's expenses at Chicago	50 25
	To Horatio Seymour for taking charge and supervision of said property, including clerk hire, office expenses, postages, and cost of ten visits to Chicago for 29 years, at $100 per year	2,900 00
		3,816 45

HORATIO SEYMOUR.

149 STATE OF NEW YORK, *Oneida County, ss:*

Horatio Seymour, being duly sworn, deposes and says:

That the account hereto annexed is correct, and the amounts stated herein to be paid have been actually paid by the estate of Henry Seymour, except the charge for the services of Horatio Seymour against the said estate, which is outstanding and is a just charge.

HORATIO SEYMOUR.

Sworn and subscribed to before me, this 21st day of April, 1866.

H. D. ALEXANDER,
Not'y Public, City of Utica.

Rev. stamp, 5 cts. cancelled.

150 *Exhibit C.—J. T. M.* (p. 37.)

1857.				
Feby.	3	Cash paid judges fee in suit	$3 00	
Feby.	21	Cash pay't by J. W. Davis on new sale E. half S. W. qr. sec. 6, 38, 14		$500 00
March	9	Cash of do. per sale of town. pay't		1,500 00
March	18	Draft sent Horatio Seymour, exch. $21	1,421 00	
March	18	Draft, with ex. of $21, sent John F. Seymour	812 00	
March	18	Draft, with ex. of $21, sent Edmond A. Wetmore	1,421 00	
March	28	Draft, with ex. of $21, sent Roscoe Conkling	1,421 00	
April	1	Draft, with ex. of $21, sent Ed'd F. Shonnard	1,421 00	
April	4	State and city taxes, 1856, of land in Cook co	231 32	
April	4	P'd for specie to pay the above	2 62	
April	4	5 per cent. commission on tax pay'ts	11 57	
April	9	P'd for J. F. Seymour to Amasa Wright	609 00	
April	21	P'd Vattel and Cody on S. W. qr., sec. 2, 37, 11, in Du Page co., 1856, $17 20; sp. 26, com. $1 72	19 18	
April	21	Draft and ex. $21 to Ledyard Linklaen	1,421 00	
April	29	Cash paid H. B. Hind, for drainage, com'rs, on W. half, N. W. qr. and W. half, S. W. qr. 32, 41, 14	240 00	
April	29	5 per cent. com. on drainage	12 00	
April	30	P'd Grundy co. taxes of 1856, $41 06, and $4 99 gold and com	46 05	
July	1	P'd Wm. B. Egom, for making road on the S. end E. half, N. W. qr., sec. 22, 38 14	25 00	
July	6	Cash paid A. C. Coventry for services; expenses going, am't for recording mortgages from Davis to Seymour, and use for the Seymour estate	164 50	
July	11	To 2½ per cent. com'n on $12,012, sale to Davis, E. half, S. W. qr., sec. 6, 38, 14	300 30	
151		Am't carried over	9,581 04	2,000 00
		Am't bro't over	9,581 04	2,000 00
Sept.	1	Cash p'd spe'l ass't on lot 4, bl. 11, old town Joliet, sent M. D. Risley	71 25	
Sept.	5	By cash rec'd of R. A. Brown for grass on W. half, N. W. qr. and W. half S. W. qr., S. 32, 41, 14		15 00
Sept.	15	To 10 c. com's on $71 25, sp'l ass't aft	7 12	
Oct.	24	Cash rec'd of Jno. Wentworth; am't of note due; 22 c. interest for 3d pay'ts on E. half, N. W. qr., and N. W. qr. 18, 38, 13		755 20
Nov.	13	To cash p'd A. C. Coventry, as per his recpt. and instructions from Mr. Mather	755 20	
			10,414 61	2,770 20

Exhibit C.—Freer *vs.* Seymour, June 29, 1866.

Exhibit D.—1866.

Estate Henry Seymour to A. C. Coventry, DR.

To taking charge of property and making collections for estate, paying taxes, and attending to leasing same, from Nov., '57, to date of decree, 8 years, 5 per cent. on am't rec'd, the same being $1,448 86

152 *Exhibit E.—J. T. M.*

Statement of accounts of money received by Horatio Seymour and others, heirs and devisees of Henry Seymour, deceased, at Utica, on the bond and mortgage of Henry F. Peyton, on und. half of E. half of S. W. qr. of sec. 36, T. 39 N., R. 13 E., which moneys did not pass through Mr. Coventry's hands.

1858.		
Jan'y 26	Cash	$995 70
Jan'y 26	Note of Peyton, Dec. 22, 60 days	1,006 08
June 7	Cash	513 24
June 7	Note payable Aug. 18	518 65
1859.		
Jan'y 16		947 76
Jan'y 15	Note on in't	945 00
1860.		
Jan'y 2	Cash	894 38
Jan'y 2	Note	894 38
		6,715 19

The last credit by Mr. Coventry of the payment he received of Peyton being added to this makes the whole of the mortgage.

Indorsed: Filed July 28, 1866.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the 30th day of July, A. D. 1866, Exhibits F, G, and H, referred to in said master's report, were filed in said clerk's office, and are respectively in the words and figures following, to wit:

153 *Exhibit F.—J. T. M.*

This indenture, made this twenty-first day of February, in the year of our Lord one thousand eight hundred and fifty-seven, (A. D. 1857,) between John W. Daviss, of the city of Mobile, in the State of Alabama, party of the first part, and Horatio Seymour, John F. Seymour, Edmund A. Wetmore, trustee of Mrs. Mary F. Miller, Roscoe Conkling, all of the city of Utica, in the county of Oneida, and State of New York, and Ledyard Lincklaen, of Cazenovia, in the county of Madison, and State of New York, and Edward F. Shonnard, of Yonkers, in the county of Westchester, and State of New York,

154 party of the second part, witnesseth:

Whereas the said party of the first part is justly indebted unto the said party of the second part in the full sum of twenty-seven thousand dollars, (27,000,) lawful money of the United States of America, secured to be paid by his certain bond, bearing even date herewith, said bond being in the penal sum of fifty-four thousand dollars, (54,000,) and the condition of which said bond is in substance, as follows:

The condition of the above obligation is such that if the above-bounden John W. Davis, his heirs, executors, or administrators, shall pay or cause to be paid to the above-named Horatio Seymour, John F. Seymour, Edmund A. Wetmore, trustee of Mrs. Mary F. Miller,

Roscoe Conkling, Ledyard Lincklaen, and Edward F. Shonnard, or any or either of them, their or either of their executors, administrators, or their assigns, the full sum of twenty-seven thousand dollars, ($27,000,) lawful money of the United States of America, with annual interest at the rate of six per cent. per annum, from the
155 twenty-fifth day of January, A. D. 1857, to be paid in each year on the whole sum from time to time remaining unpaid, in manner following, (that is to say,) the sum of nine thousand dollars, ($9,000,) part thereof, with the sum of one thousand six hundred and twenty dollars, ($1,620,) being one year's interest on the twenty-fifth day of January, A. D. 1858; the sum of nine thousand dollars, ($9,000,) part thereof, and the sum of one thousand and eighty dollars, ($1,080,) being one year's interest on the twenty-fifth day of January, A. D. 1859; and the further sum of nine thousand dollars, ($9,000,) and the sum of five hundred and forty dollars ($540) on the twenty-fifth day of January, A. D. 1860, all of said payments to be made at the office of John High, jr., Chicago, Illinois, or at such other place in said Chicago as said party of the second part may appoint, then this obligation shall be void. But if default shall be made in the payment of any or either of said several and respective sums of money respectively above mentioned, or in the payment of
156 any or either of said several instalments of interest respectively above mentioned, in manner aforesaid, or any part of them, or of either of them, on any of the said days and times above mentioned, for payment thereof according to the true intent and meaning of these presents, and if any or either of said payments of principal or either of said instalments of interest, or any part or parts of either of said payments, whether for principal or interest, shall remain due and owing and unpaid for the space of thirty days after the same become due and payable, according to the true intent and meaning of this bond, then and in that case the whole of said principal sum secured to be paid hereby, shall forthwith become and be due and payable, anything hereinbefore contained to the contrary notwithstanding, and then and in that case this obligation is to remain in full force and virtue.

Now, therefore, this indenture further witnesseth, that the said party of the first part, for better securing the payment of the said
157 bond at the time and times, and at the place in the manner in said bond specified, and in further consideration of the sum of one dollar to him in hand paid by the said party of the second part, has granted, bargained, sold, aliened, remised, released, conveyed, and confirmed, and by these presents do grant, bargain, sell, alien, remise, release, convey, and confirm unto the said party of the second part, their heirs and assigns forever, all the following described lands and premises situate, lying, and being in the county of Cook and State of Illinois, known and described as that part or portion of the north half of the southeast quarter of section twelve (12) in township thirty-nine (39) north, of range thirteen (13) east, of the third principal meridian, which is bounded and described as follows, to wit: Commencing at a point on the south line of said north half of the southeast quar-

ter of said section twelve (12) above referred to, distant three hundred and thirty-seven (337) feet due west on said south line from
158 the southeast corner of said north half of the southeast quarter of said section twelve (12) above referred to; running thence due north on a line parallel with the east boundary line of said quarter section, six hundred and sixty-two feet and fifty-five one-hundredths of a foot, ($665\frac{55}{100}$,) to the south line of the premises heretofore set off to Elias Price and others, heirs-at-law and legal representatives of Jeremiah Price, deceased, as such his heirs at law and legal representatives by the commissioners in a certain cause for partition lately pending in the Cook county court of common pleas, wherein Horatio Seymour and others were parties complainants, and said Elias Price, and others were parties defendant, as by the records of said court will more fully and at large appear, and running thence due west on said south line, two thousand and one hundred and seventy-seven feet and twenty one-hundredths of a foot ($2,177\frac{20}{100}$) to the west line of the premises set off in said cause above referred to, to Julia C. Conkling, one of said above mentioned complainants; and running thence south along said Julia C. Conkling's west line, six hundred and
159 sixty-two feet and eight one-hundredths of a foot ($662\frac{8}{100}$) to a point on the south line of said north half of the southeast quarter of said section twelve (12,) and running thence due east along said south line last above referred to, twenty-one hundred and seventy-seven feet and twenty one-hundredths of a foot ($2,177\frac{20}{100}$) to the place of beginning; being part and parcel of the premises this day conveyed by said party of the second part to said party of the first part, and to secure so much of the purchase money to become due and remaining unpaid for said premises, the bond above referred to and this mortgage is given. To have and to hold the same, together with all and singular the tenements, hereditaments, and appurtenances, thereunto belonging, or in anywise appertaining, and also all the estate, interest, and claim whatever in law as well as in equity, which the party of the first part has in and to the premises hereby conveyed unto the said party of the second part, their heirs and assigns, to their, and their only, proper use, benefit, and be-
160 hoof. Provided always, and these presents are upon this express condition, that if the said party of the first part, his executors, administrators, devisees or assigns, shall well and truly pay, or cause to be paid unto the said party of the second part, their executors, administrators, or assigns, the said several instalments, both of principal and interest in the said bond hereinbefore referred to, mentioned according to the true intent and meaning of said bond, and shall pay all taxes and assessments levied or assessed on said premises, or any part thereof, at any time before said indebtedness shall be fully paid and satisfied as the same becomes due and payable, that then, and in that case, these presents shall be null and void.

And the said John W. Davis, for himself, his heirs, executors, administrators, doth covenant and agree to and with the said party of the second part, their executors, administrators, and assigns, that he will pay or cause to be paid all taxes and assessments that may be

laid, charged, levied, or assessed on or against said premises,
161 or any part or parts thereof, while said indebtedness or any part thereof remains unpaid, or if at any time after any such tax or assessment shall have become due and payable, the said John W. Davis, or his legal representatives, shall neglect to pay the same, it may be lawful for the said party of the second part to pay the same at any time thereafter, and the amount of any and all such payments so made by said party of the second part, their heirs, executors, administrators, or assigns, shall be deemed and taken, and are hereby declared to be so much additional and further indebtedness due from said John W. Davis, his heirs, executors, or administrators, to said party of the second part, their executors, administrators, or assigns, as soon as paid by them, or them secured by this mortgage, bearing interest at ten per cent., and may be collected in the same manner as is hereinafter provided for the collection of the other indebtedness secured hereby, or by suit at law in any court having proper jurisdiction.

But if default shall be made by the said John W Davis, his
162 heirs, executors, administrators, or assigns, in the payment of any tax or assessment levied or assessed on said premises, or any part thereof, after the same becomes due and payable, or in the payment of any one or either of said instalments either of principal or interest in said bond hereinbefore referred to, mentioned, or if the same or either of them, or any part or parts of the same, or of either of them shall remain due and unpaid for the space of thirty (30) days after the same shall have become due and payable according to the tenor and effect of said bond, and of the true intent and meaning of the same, then, and in either of said cases, it shall be lawful for the said party of the second part, their executors, administrators, or assigns, at any time after such default, without notice, to enter into and upon all and singular the premises hereby conveyed or intended so to be, and each and every tract thereof, and the same from henceforth peaceably and quietly to have, hold, use, and enjoy, and the rents, issues, and profits thereof to take and receive to their
163 and their own use, benefit, and advantage, without any hindrance, eviction, or interruption whatsoever, and to sell and dispose of the same or any part or parts thereof, and all benefit and equity of redemption of the said party of the first part, his heirs, executors, administrators, devisees, or assigns therein, having first given thirty days notice of the time and place of said sale, by publication in any daily newspaper published in said city of Chicago, and to adjourn said sale from time to time at their discretion, and as the attorney of said party of the first part by these presents duly authorized, constituted, and appointed, or in the name of said party of the second part, his heirs, executors, administrators, or assigns, to make, execute, and deliver to the purchaser or purchasers thereof a good and sufficient deed or deeds of conveyance in the law for the same in fee simple, and out of the money arising from such sale, to retain the whole amount due or to become due on said bond hereinbefore referred to of said principal sum, and all interest due by the terms of said bond.

at the time of such sale, with interest on all of said instalments mentioned in said bond which, at the time of such sale, might be due or past due by the terms of said bond, and all sums advanced by them or them on account of said property, together with the costs and charges of advertisement and sale of said premises or any part or parts thereof, including the charges of the attorney or other person making such sale, and to render the overplus of the purchase-money, if any there be, unto the said John W. Davis, his heirs, executors, administrators, or assigns, which sale so to be made shall be a perpetual bar, both in law or in equity, against the said party of the first part, his heirs and assigns, and against all and every person or persons claiming or to claim the whole or any part thereof by, from, through, or under him; but if the amount realized from such sale shall not be sufficient to pay and satisfy full all of said principal sum secured to be paid by said bond, whether due or to become due, together with all of said instalments of interest therein mentioned, which, at the time of such sale, may be due, together with all interest due on either of said instalments, or any part or parts thereof then due, together with all sums advanced on account of said property, and all costs or expenses attending on or growing out of such advertisement and sale, including charges as aforesaid for selling the same, then to apply the proceeds of said sale, first, in the payment of all such costs, charges, and expenses, and in the payment of all sums advanced on account of said property, and in the payment of all interest then due on either of said instalments either of principal and interest, and the balance, if any there be, to indorse as so much paid on said bond.

And it is further stipulated and agreed by and between the parties hereto and the said party of the second part, for themselves, their executors, administrators, or assigns, agree that on the payment by the said party of the first part of the said several instalments both of principal and interest in said bond mentioned, to be paid on the twenty-fifth day of January, A. D. 1858; that then and in that case they, said party of the second part, shall release and discharge from the lien of this mortgage the east five (5) acres of said tract hereinbefore described, at the request of the said party of the first part, and that on the payment by him, said party of the first part, of the said several instalments both of principal and interest in said bond mentioned, to be paid on the twenty-fifth day of January, A. D. 1859, that then, at the request of the said party of the first part, they will further release and discharge from the same the east five (5) acres of the remaining portion of said premises hereinbefore described.

In testimony whereof the said party of the first part has hereunto set his hand and seal the day and year first above written.

[SEAL.] JOHN W. DAVIS.

NOTE.—On 15th line of second page "all of said payments to be made at the office of John High, jr., Chicago, Ills.," and in second line from bottom on ninth page the words "from the lien of this mortgage," all inserted before signing.

167 Signed, sealed, and delivered in presence of, and also in said 15th line on second page, "or at such other place in said Chicago as said party of the second part may appoint," also inserted before signing.

JOHN W. DAVIS.

STATE OF ILLINOIS, *Cook County, ss:*

I, Jesse B. Thomas, a notary public for Chicago, in said county in the State aforesaid, do hereby certify that John W. Davis, who is personally known by me to be the same person whose name is subscribed to the annexed mortgage, appeared before me this day in person and acknowledged that he had signed, sealed, and delivered the said instrument of writing as his free act and deed for the uses and purposes therein expressed.

Given under my hand and notarial seal this twenty-sixth day of June, A. D. 1857.

[L. S.] JESSE B. THOMAS,
Notary Public.

168 882 30.

STATE OF ILLINOIS, *Cook County:*

Filed for record 26th June, 1857, and recorded in book 33, mortgages, page 256.

WM. L. CHURCH, *Clk.*

Indorsed: Superior court of Chicago, in chancery. Horatio Seymour *et al. vs.* John W. Davis *et al.*

Exhibit 2.

Ira Scott, master in chancery, &c.

STATE OF ILLINOIS, *County of Cook, ss:*

Superior court of Chicago, in chancery.

HORATIO SEYMOUR, JOHN F. SEYMOUR, EDMUND A. Wetmore, trustee of Mrs. Mary F. Miller, Roscoe Conkling, Ledyard Lincklaen, and Edward F. Shonnard,
vs.
JOHN W. DAVIS and USHER PARSONS.

To the honorable the judges of the superior court of Chicago:

169 In pursuance and in virtue of a decretal order heretofore entered in the above cause, by which it was referred to the undersigned, one of the masters of this court, to compute, ascertain, and report the amount due to the complainants for principal and interest on the bond and mortgage mentioned and set forth in the bill of complaint filed in this cause, and report thereon to this court, I, the said master, do respectfully report that the said com-

plainants, this seventh day of March, A. D. 1862, by their solicitor, appeared before me at my office in the city of Chicago and produced in evidence before me the bond and mortgage mentioned and set forth in their said bill, bearing date the twenty-first day of February, A. D. 1857, made and executed by the above-named defendant, John W. Davis, to the said complainants, the said bond being in the penal sum of fifty-four thousand dollars conditioned to pay the sum of twenty-seven thousand dollars, with annual interest at the rate of six per cent. per annum from the twenty-fifth day of January, A. D. 1857, to be paid in each year on the whole sum from time to time remaining unpaid in manner following, viz: The sum of nine thousand
170 dollars, part thereof with the sum of one thousand six hundred and twenty dollars, being one year's interest on the 25th day of January, 1858. The sum of $9,000, part thereof, and the sum of $1,080, being one year's interest on the 25th day of January, 1859, and the further sum of $9,000, and the sum of $540 interest on the twenty-fifth day of January, A. D. 1860.

It being provided in and by said bond that if default should be made in the payment of any or either of the said several and respective sums of money respectively above mentioned, or in the payment of any or either of said several instalments of interest respectively above mentioned in manner aforesaid, or any part of them, or either of them, or any of the said days and times above mentioned for payment thereof; and if any or either of said payments of principal, or either of said instalments of interest, or any part or parts of either of said payments, whether for principal or interest, should remain due and owing and unpaid for the space of thirty days after the same should become due and payable as aforesaid, that then and in that case the whole of said principal sum should forthwith become due and payable.

171 And I do further report that the complainants, by their said bill, admit the payment by said defendant, John W. Davis, on the 28th day of September, 1859, of said first instalment of principal and interest due and payable on the said twenty-fifth day of January, A. D. 1858, leaving now due and unpaid upon said bond and mortgage the sum of eighteen thousand dollars principal, with interest thereon at the rate of six per cent. per annum from the said twenty-fifth day of January, A. D. 1858.

And I do further report that I have computed and ascertained the amount due to the complainants upon the said bond and mortgage, (which are herewith returned, marked Exhibit 1 and 2, respectively,) and that the amount so due on the said bond and mortgage for the principal and interest up to and including the date of this report is the sum of twenty-two thousand four hundred and forty dollars, ($22,440.)

And I do further report that the schedule hereunto annexed,
172 marked A, and making a part of this my report, contains a statement and account of the principal and interest moneys due to the complainants as aforesaid; the period of the computation

of the interest and its rate, and to which, for greater certainty, I refer. All which is respectfully submitted.

Dated March 7th, 1862.

IRA SCOTT.
Master in Chancery of the Superior Court of Chicago.

Master's fees, $3.

Schedule marked A, referred to in preceding report.

One bond dated February 21, 1857, in the penal sum of $54,000, conditioned to pay $27,000, with annual interest at the rate of 6 per cent. per annum from January 25th, 1857, as above stated, upon which has been paid $9,000 principal and interest on whole sum remaining unpaid to January 25th, 1858.

Principal sum due	$18,000 00
Interest thereon from January 25, 1858, to March 7, 1862, at 6 pr. ct., being 4 years, 1 month. and 10 days	4,440 00
Amount due complainants this 7th day of March, 1862.	22,440 00

IRA SCOTT,
Master in Chancery of the Superior Court of Chicago.

173 STATE OF ILLINOIS, *County of Cook, ss:*

I, Thomas B. Carter, clerk of the superior court of Chicago within and for the county and State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of a certain mortgage and the master's report of amount due in a certain cause lately pending in said court on the chancery side thereof, wherein Horatio Seymour, John F. Seymour, *et al.*, were complainants, and John H. Davis and Usher Parsons, defendants.

In witness whereof I have hereunto set my hand and affixed the seal of said court at Chicago, this 14th day of December, A. D. 1865.

[SEAL.] THOMAS B. CARTER, *Clerk.*

[5-cent revenue stamp.]

Indorsed: Filed October 20th, 1862.

THOMAS B. CARTER, *Clk.*

Indorsed: Filed July 30th, 1866.

WM. H. BRADLEY, *Clk.*

Exhibit G.—J. T. M.

174 The indenture, made this twenty-first day of February, in the year of our Lord one thousand eight hundred and fifty-seven, (A. D. 1857,) between John W. Davis, of the city of Mobile, in

the State of Alabama, party of the first part, and Horatio Seymour, John F. Seymour, Edmund A. Wetmore, trustee of Mrs. Mary F. Miller, Roscoe Conkling, all of the city of Utica, in the county of Oneida, and State of New York, Ledyard Lincklain, of Cazenovia, in the county of Madison, and State of New York, and Edward F. Shonnard, of Yonkers, in the county of Westchester, in the State of New York, party of the second part, witnesseth: That whereas the said John W. Davis, of the party of the first part, is justly indebted to the said party of the second part in the full sum of ten thousand dollars, ($10,000,) lawful money of the United States of America, secured to be paid by his, the said John W. Davis, certain bond in the penal sum of
175 twenty thousand dollars, ($20,000,) and bearing even date herewith, the condition of which said bond is in substance in the words and figures following, that is to say:

The condition of the above obligation is such that if the above bounden John W. Davis, his heirs, executors, or administrators, shall well and truly pay, or cause to be paid, to the said Horatio Seymour, John F. Seymour, Edmund A. Wetmore, trustee of Mrs. Mary F. Miller, Roscoe Conkling, Ledyard Linklain, and Edward F. Shonnard, or any or either of them, their or either of their executors, administrators, or their assigns, the full sum of ten thousand dollars, ($10,000,) lawful money of the United States of America, with annual interest, at the rate of six per cent. per annum, from the said twenty-first day of February, A. D. 1857, to be paid in each year on the whole sum from time to time remaining unpaid, in manner following, (that is to say,) the sum of two thousand dollars, ($2,000,) part of said principal sum, with the sum of six hundred dollars, ($600,) being one year's interest on the twenty-first day of February, A. D. 1858, the sum of two thousand dollars, ($2,000,) part of said principal sum, and
176 the sum of four hundred and eighty dollars, ($480,) being one year's interest on the twenty-first day of February, A. D. 1859, and the sum of two thousand dollars, ($2,000,) part of said principal sum, and the sum of three hundred and sixty dollars, ($360,) being one year's interest on the twenty-first day of February, A. D. 1860, and the sum of two thousand dollars, ($2,000,) being part of said principal sum, and the sum of two hundred and forty dollars, ($240,) being one year's interest on the twenty-first day of February, A. D. 1861, and the further sum of two thousand dollars ($2,000,) being part of said principal sum, together with the further sum of one hundred and twenty dollars, ($120,) being one year's interest on the twenty-first day of February, A. D. 1862, all of said payments to be made at the office of John High, jr., or at such other place in said Chicago as said party of the second part may appoint in the city of Chicago, in the State of Illinois, then this obligation shall be void. But if default shall be made in the payment of any or either of the said several and respective instalments above mentioned,
177 either of principal or interest, on the day and days above mentioned for the payment of the same, and at the place hereinbefore mentioned, according to the true intent and meaning of this bond, and if the same, or either of said several and respective instalments

above mentioned, either for principal or interest, or any part of either of said instalments shall remain due and unpaid for the space of thirty days after the same or any part thereof becomes due and payable, according to the true intent and meaning of this bond, then, and in that case, the whole of said principal sum secured to be paid hereby shall forthwith become and be due and payable, anything hereinbefore contained to the contrary notwithstanding.

Now, therefore, this indenture further witnesseth, that the said party of the first part, for the better securing the payment of the money aforesaid, according to the tenor and effect, true intent and meaning of said bond above mentioned, and also in considera-
178 tion of the further sum of one dollar to him in hand paid by the said party of the second part at the delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and conveyed, and by these presents does grant, bargain, sell, and convey, unto the said party of the second part, their heirs and assigns, forever, all the following-described pieces or parcel of land known and described on the east half of the southwest quarter of section six, (6,) in township thirty-eight (38) north, of range fourteen (14) east of the third principal meridian, situate, lying and being in the county of Cook and State of Illinois, being the same premises this day conveyed by said party of the second part and others to said party of the first part and to secure so much of the purchase money for said hereinbefore described premises, said bond hereinbefore referred to and this mortgage is given.

To have and to hold the same, together with all and singular the tenements, hereditaments, privileges, and appurtenances thereunto belonging, or in anywise appertaining, and also all the estate,
179 interest, and claim whatsoever, as well in law as in equity which the party of the first part has in and to the same unto the said party of the second part, their heirs and assigns, forever, to their and their only proper use, benefit, and behoof.

Provided always, and these presents are upon this express condition, that if the said party of the first part hereto, his heirs, executors, or administrators, shall pay or cause to be paid to the said party of the second part, their heirs, executors, administrators, or assigns, the aforesaid sum of ten thousand dollars, with such interest thereon at the time and in the manner specified in said bond hereinbefore referred to, and mentioned according to the true intent and meaning hereof then, and in that case, these presents, and everything hereinbefore contained, shall be absolutely null and void.

But if default shall be made by the said John W. Davis, his heirs, executors, or administrators, in the payment of any one of said instalments in said bond mentioned, either of principal or inter-
180 est, and if the same or either of them or any part of either of the same shall remain due and unpaid for the space of thirty days after the same becomes due and payable, according to the true intent and meaning of said bond, then, and in that case, of whole of said principal sum secured to be paid by said bond, and then remaining unpaid, due, or to become due, shall forthwith become and be due and payable, anything in said bond contained to the contrary

notwithstanding; and then and in that case this mortgage may be immediately foreclosed to pay the same by the said party of the second part, their heirs, executors, administrators, or assigns, or the said party of the second part, their heirs, executors, administrators, or assigns, at their election so to do, may sell the same at public auction, having first given sixty (60) days' notice of the time and place of such sale by publication, published in any daily newspaper published in the city of Chicago, to the highest bidder for cash; and may
181 adjourn said sale from time to time at their discretion, which sale so to be made shall be a perpetual bar both in law and equity against the said party of the first part, his heirs, executors, administrators, or assigns, and all other persons claiming or to claim the said premises, or any part or parts thereof by, through, from, or under him, and at such sale, when so made as aforesaid, as the attorney of the said party of the first part, by these presents duly authorized, constituted, and appointed, or in the name of the said party of the second part, their heirs, executors, administators, or assigns, shall make and deliver to purchaser or purchasers of said hereinbefore described premises, good and sufficient deed or deeds of conveyance for and of said premises in fee simple, and which deed or deeds, when so made and delivered as aforesaid, shall convey to and vest in the purchaser or purchasers of said hereinbefore described premises all the right, title, or interest, either in law or equity, of the said party of the first part, his heirs, executors, administrators, or assigns, in and to the premises thereby conveyed or
182 intended so to be, and all equity of redemption of the said party of the first part, his heirs or assigns, in as full and ample a manner as could be done if such conveyance were made by said party of the first part, his heirs or assigns. And out of the proceeds of said sale after first paying all costs and expenses of advertisement and sale, including the charge of the attorney, or other person making such sale, first to pay all sums advanced by said party of the second part on account of said premises; then in the paying of all interest due at the time of said sale; then in the payment of all of said instalments of interest due at the time of said sale, according to the tenor and effect of said bond hereinbefore alluded to, and the remainder to indorse as so much paid on said principal sum secured to be paid by said bond, and the overplus, if any there should be, to pay to the said party of the first part, his executors, administrators, or assigns.

In testimony whereof the said party of the first part has
183 hereunto set his hand and seal the day and year first above written.

[SEAL.] JOHN W. DAVIS.

NOTE.—On the second page and 23d line, "on the twenty-first day of February, A. D. 1861," and on second line from bottom of third page, "thirteen" crossed out and "fourteen" written over; all before signing; and also on 30th line 2d page, "or at such other place in said Chicago as said party of the second part may appoint."

J. W. DAVIS.

184 STATE OF ILLINOIS, *Cook County, ss:*

On this third day of March, A. D. 1857, before me, a notary public in and for the city of Chicago, in the said county and State, personally came John W. Davis, to me personally known to be the real person named in and who executed the foregoing instrument in writing, and acknowledged the same to be his free act and deed for the uses and purposes therein set forth.

Witness my hand and notarial seal.

[L. S.] FRANKLIN HATHEWAY,
Notary Public.

Indorsed: State of Illinois, Cook county, 88,229.

Filed for record 26 June, 1857, and rec'd in book 33 of mortgages, page 252.

WM. L. CHURCH, *Cl'k.*

Exhibit 2.

Superior court of Chicago, in chancery.

HORATIO SEYMOUR *et al.*
vs.
JOHN W. DAVIS.

IRA SCOTT,
Master in Chancery, &c.

Superior court of Chicago, in chancery.

HORATIO SEYMOUR, JOHN F. SEYMOUR, EDMUND A. Wetmore, trustee of Mrs. Mary F. Miller, Roscoe Conkling, Ledyard Linclain, and Edward F. Shonnard,
vs.
JOHN W. DAVIS.

185 STATE OF ILLINOIS, *County of Cook, ss:*

To the honorable the judges of the superior court of Chicago:

In pursuance and in virtue of a decretal order heretofore entered in the above cause, by which it was referred to the undersigned, one of the masters of this court, to compute, ascertain, and report the amount due to the complainants for principal and interest on the bond and mortgage mentioned and set forth in the bill of complaint filed in this cause, and report thereon to this court—

I, the said master, do respectfully report that the said complainants, this seventh day of March, A. D. 1862, by their solicitor, appeared before me at my office, in the city of Chicago, and
186 produced in evidence before me the bond and mortgage mentioned and set forth in their said bill, bearing date the twenty-first day of February, A. D. 1857, made and executed by the

above-named defendant to the said complainants, said bond being in the penal sum of twenty thousand dollars, conditioned to pay the sum of ten thousand dollars, with annual interest at the rate of six per cent. per annum from the said twenty-first day of February, 1852, to be paid in each year on the whole sum, from time to time, remaining unpaid in manner following, viz: The sum of two thousand dollars, part of said principal sum, with the sum of $600, being one year's interest on the 21st day of February, 1858, and the sum of $2,000, part of said principal sum, and the sum of $480, being one year's interest on the twenty-first day of February, 1859, and the sum of $2,000, part of said principal sum, and the sum of $360, being one year's interest on the twenty-first day of February, 1860, and the sum of $2,000, being part of said principal sum, with the
187 sum of $240, being one year's interest on the 21st day of February, 1861, and the further sum of $2,000, being part of said principal sum, together with the further sum of $120, being one year's interest on the 21st day of February, 1862.

It being provided in and by said bond that if default should be made in the payment of any or either of said several and respective instalments above mentioned, either of principal or interest, on the day and days above mentioned for the payment of the same, and at the place therein mentioned, and if the same or any part thereof should remain due and unpaid for the space of thirty days after the same or any part thereof should become due and payable, that then and in that case the whole of said principal sum shall forthwith become due and payable.

And I do further report that I have computed and ascertained the amount due to the complainants upon the said bond and mortgage, (which are herewith returned marked Exhibit 1 and 2, respectively,) and that the amount so due on the said bond and mortgage
188 for the principal and interest, up to and including the date of this report, is the sum of thirteen thousand and twenty-three dollars and thirty-three cents, the same being the said principal sum of ten thousand dollars, with interest thereon at the rate of six per cent. per annum from the date thereof up to and including the date of this report.

And I do further report that the schedule hereunto annexed, marked A, and making a part of this, my report, contains a statement and account of the principal and interest, moneys due to the complainants, as aforesaid. The period of the computation of the interest and its rate, and to which, for greater certainty, I refer.

All which is respectfully submitted.

Dated March 7th, 1862.

IRA SCOTT,

Master in Chancery of the Superior Court of Chicago.

189 *Schedule marked A, referred to in preceding report.*

One bond dated February 21st, 1857, in the penal sum of $20,000, conditioned to pay $10,000, as above stated.

Principal sum due	$10,000 00
Interest thereon from February 21, 1857, to March 7th, 1862, being 5 years and 14 days, at 6 per cent. per annum	3,023 33
Amount due complainants, this 7th day of March, 1862	13,023 33

IRA SCOTT,
Master in Chancery of the Superior Court of Chicago.

STATE OF ILLINOIS, *County of Cook, ss:*

I, Thomas B. Carter, clerk of the superior court of Chicago within and for the county and State aforesaid, do hereby certify the above and foregoing to be a true, perfect, and complete copy of a certain mortgage and the master's report of amount due in a certain cause lately pending in said court on the chancery side thereof, wherein Horatio Seymour *et al.* are complainants, and John W. Davis defendant.

190 In witness whereof I have hereunto set my hand and affixed the seal of said court at Chicago, this 14th day of December, A. D. 1865.

[SEAL.] THOMAS B. CARTER, *Clerk.*

[Revenue stamp.]

Indorsed: Filed July 30, 1866.

WM. H. BRADLEY, *Clerk.*

191 33 *of mortgages, page* 261.—*Exhibit H, J. T. M.*

This indenture, made this fourteenth day of October, in the year of our Lord one thousand eight hundred and fifty-six, (A. D. 1856,) between Harvey F. Payton, of the city of Providence, and the State of Rhode Island, party of the first, and Horatio Seymour, John F. Seymour, Edmund A. Wetmore, trustee of Mrs. Mary F. Miller, Roscoe Conkling, all of the city of Utica, in the county of Oneida; Ledyard Lincklain, of Cazenovia, in the county of Madison, and Edward F. Shonnard, of Yonkers, in the county of Westchester, and all in the State of New York, party of the second part, witnesseth: That whereas the said party of the first is justly indebted to the said party of the second part in the sum of seven thousand seven hundred and sixty-two dollars and fifty cents, ($7,762 50,) secured to be paid by his the said Harvey F. Payton's certain bond for that amount, bearing even date herewith, the condition of which said bond is in substance, as follows:

The condition of the above obligation is such, that if the above-

bounden Harvey F. Payton, or his heirs, executors, or admin-
192 istrators, shall well and truly pay, or cause to be paid unto the above-named Horatio Seymour, John F. Seymour, Edmund A. Wetmore, trustee, etc., Roscoe Conkling, Ledyard Lincklain, and Edward T. Shonnard, or any of them, their, or either of their executors, or administrators, or assigns, the full sum of seven thousand, seven hundred and sixty-two dollars and fifty cents, ($7,762 50,) in manner following: that is to say, the sum of two thousand and ninety-two dollars and fifty cents ($2,092 52) on the 24th (twenty-fourth) day of December, A. D. 1856; the sum of one thousand nine hundred and ninety-one dollars and twenty-five cents ($1,991 25) on the twenty-fourth (24th) day of December, A. D. 1857; the sum of one thousand and eight hundred and ninety dollars ($1,890) on the twenty-fourth (24th) day of December, A. D. 1858; and the sum of one thousand and seven hundred and eighty-eight dollars and seventy-five cents ($1,788 75) on the twenty-fourth day of December, A. D. 1859, all of the said payments to be made at the office of John High, jr., in the city of Chicago, then this obligation to be void; but

if default shall be made in the payment of any or either of
193 said several and respective sums of money in manner aforesaid, or any part of them, on any of said days and times above mentioned for payment thereof, according to the true intent and meaning of these present, and for the space of twenty days after either of said payments become payable, then each and every of said sums above mentioned shall forthwith become due and payable, anything herein contained to the contrary notwithstanding, then this obligation is to remain in full force and virtue.

Now therefore this indenture witnesseth that the said party of the first part, for the better securing the payment of the money aforesaid, with interest thereon, according to the tenor and effect of the said bond above mentioned, and also in consideration of the further sum of one dollar ($1 00) to him in hand paid by the said party of the second part at the delivery of these presents, the receipt whereof is hereby acknowledged, have granted, bargained, sold, and conveyed, and by these presents do grant, bargain, sell, and convey unto

the said party of the second part, their heirs and assigns, for-
194 ever, all and singular of the following described tract of land, to wit:

"The one undivided one-half part of the following described lot, piece, or parcel of land, situated in the county of Cook, and State of Illinois, known and described as follows, to wit: The east half of the southwest quarter of section thirty-six, (36,) in township thirty-nine (39) north, of range thirteen (13) east of the third principal meridian, the same being one undivided half part of eighty acres, (80,) be the same more or less."

And being the same premises this day conveyed by the said party of the second part to the said party of the first part, for the securing so much remaining unpaid of the purchase money to become due on said premises above described, the said bond above mentioned and this mortgage is given. To have and to hold the same, together

with all and singular the tenements, hereditaments, privileges, and appurtenances thereunto belonging, or in any wise appertaining; and also, all the estate, interest, and claim whatsoever in law as
195 well as in equity, which the party of the first part has in and to the premises hereby conveyed unto the said party of the second part, their heirs and assigns, and to their only proper use, benefit, and behoof: provided always, and these presents are upon this express condition, that if the said party of the first part, his heirs, executors, or administrators, or assigns, shall well and truly pay, or cause to be paid to the said party of the second part, or either of their heirs, executors, administrators, or assigns, the aforesaid sum of money at the time and in the manner and place specified in the above-mentioned bond, according to the true intent and meaning thereof, then and in that case, these presents, and everything herein expressed, shall be absolutely null and void; but it is further expressly provided and agreed that if default be made in the payment of any one of said payments on the day or days, or at that place whereon or wherein the same shall become due and payable, the whole of said principal, secured by
196 *by* the said bond in this mortgage mentioned shall thereupon become immediately due and payable, and this mortgage may be immediately foreclosed to pay the same, by the said party of the second part, their heirs, executors, administrators, or assigns, after publishing a notice in a newspaper printed in the city of Chicago, in the State of Illinois, for forty-five (45) days before the day of such sale, may sell the said premises and all right and equity of redemption of the said Henry F. Peyton, party of the first part, his heirs and assigns therein, at public auction, at the court-house door, in said city of Chicago aforesaid, to the highest bidder, for cash, at the time mentioned in said notice, which said sale, when so made as aforesaid, shall be forever, both in law and equity, an effectual bar against all right, title, and claim of or for any equity of redemption of the said Harvey F. Payton, his heirs, executors, or assigns, in and to the above bargained and described premises, and at such sale, when so made as aforesaid, the said party of the second part, their
197 heirs, executors, administrators, or assigns, as the attorney of the said party of the first part, by these presents, duly authorized, constituted, and appointed, shall and may execute and deliver to the purchaser or purchasers of said above described premises a good and sufficient deed of conveyance in the law, in fee simple, which said deed or deeds, when so made as aforesaid, shall convey to the grantee or grantees named therein, all the right, title, and interest of the said party of the first part, his heirs or assigns, and all equity of redemption in and to the above bargained and described premises, and out of the proceeds of such sale to pay, first, all charges and expenses of advertising incurred in making such sale, including a reasonable attorney's fees for the making of such sale, and the balance to apply as so much paid on said bond hereinbefore mentioned.

And the said party of the first part hereby specially covenants and agrees to and with the said party of the second part to waive his right of equity of redemption, and further agrees that he will
198 neither assert or claim any such right on the sale of the property mentioned herein by virtue of this mortgage.

In witness whereof, the said party of the first part has hereto set his hand and seal the day and year first above written.

[SEAL.] HARVEY F. PAYTON.

In 7th line from the top, on 1st page, the word "Edward" erased and "Edmund" inserted, before signing. In 18th line from the top, on 2d page the words "and for the space of twenty days after either of said payments become payable," inserted before signing.

STATE OF RHODE ISLAND, *County of Providence:*

Nathaniel Searle, in Providence, Dec. 3, 1856.

I, Nathaniel Searle, a notary public in and for said county, in the State aforesaid, do hereby certify that Harvey F. Payton, who is personally known to me to be the same person whose name is subscribed to the foregoing mortgage, appeared before me this day, in person, and acknowledged that he had signed, sealed, and delivered the said mortgage or instrument in writing as his free act and
199 deed, for the uses and purposes therein expressed.

Given under my hand and notarial seal, this third day of December, A. D. 1856.

[SEAL.] NATHANIEL SEARLE,
Public Notary.

No. 88,231, filed June 26th, A. D. 1857.

STATE OF ILLINOIS, *County of Cook, ss:*

I, William L. Church, clerk of the circuit court and ex officio recorder in and for said county, in the State aforesaid, do hereby certify that the annexed is a true copy of a certain instrument filed in my office on the 26th day of June, A. D. 1857, and recorded in book No. 33 of mortgages, on page 261.

In testimony whereof, I have hereunto set my hand and affixed the seal of our said court, at Chicago, this 19th day of Dec'r, A. D. 1865.

[SEAL.] WM. L. CHURCH,
Clerk of the Circuit Court and ex officio Recorder of Cook County.

[Revenue stamp.]

Indorsed: Filed July 30th, 1866.

WM. H. BRADLEY, *Cl'k.*

200 On this day, to wit, the 24th day of October, A. D. 1866, in the record of the proceedings of said court in chancery in said entitled cause is the following entry, to wit:

LEMUEL C. P. FREER, administrator de bonis non of Jeremiah Price, dec'd,
vs.
HORATIO SEYMOUR and ORIGEN S. SEYMOUR, survivors of Epaphro Seymour, as executors of the last will and testament of Henry Seymour, deceased, and the said Horatio Seymour, John F. Seymour, Rutger B. Miller and Mary F., his wife, and Edmund A. Wetmore, her trustee, Edward F. Shonnard and Sophia A., his wife, Ledyard Linklaen and Helen C., his wife, Roscoe Conkling and Julia C., his wife, heirs and devisees of said Henry Seymour, deceased. } Chancery.

Now comes the complainant, by his solicitor, and moves the court to ratify and confirm the master's report filed herein on the twenty-eighth day of July last, and it appearing to the court that no
201 exceptions have been filed to said report, it is therefore ordered that the same be in all things ratified and confirmed.

202 On this day, to wit the 15th day of November, A. D. 1866, in the record of the proceedings of said court in chancery in said entitled cause is the following entry, to wit:

Final decree.

L. C. P. FREAR, administrator de bonis non of Jeremiah Price, deceased,
vs.
HORATIO SEYMOUR and ORIGEN S. SEYMOUR, survivors of Epaphro Seymour, as executors of the last will and testament of Henry Seymour, deceased, and the said Horatio Seymour, John F. Seymour, Rutger B. Miller and Mary F., his wife, and Edmund A. Wetman her trustee, Edward F. Shonnard and Sophia A., his wife, Ledyard Lincklaen and Helen C., his wife, Roscoe Conkling and Julia C., his wife, as heirs and devisees of said Henry Seymour, deceased. } In chancery.

Now come the parties by their solicitors and suggest of record the death of Ledyard Lincklaen, one of the parties defendant
203 herein; and this cause having been heretofore heard on pleadings and proofs, and a decree made and entered thereupon on

the 13th day of October, A. D. 1865, establishing and declaring the rights of the several parties to said suit as by said former decree may more fully appear. By which decree of Oct. 13th, 1865, all the accounts touching and concerning the investment and purchase of certain lands and real estate, and the sale thereof, so far as the same had progressed; the advances made by Henry Seymour, deceased, in his lifetime or by his heirs or personal representatives, since his decease, for taxes, interest, or other charges, &c., were referred to J. Tildon Moulton, one of the masters in chancery of this court, who was by said decree directed to take such proofs as either party should offer touching any matter or thing justly appertaining to a full and perfect adjustment of the proper accounts relative to said lands, and real estate or the sales thereof made or any claim whatever
204 justly due from either party to the other, touching said lands and realty, or the transactions of the parties therein or relative thereto, and said master was therein and thereby particularly directed as to the points to be embraced in his report, and the manner of stating the accounts aforesaid, and was required to report thereon with all convenient speed, to the end that the court on the coming in and confirmation of such report might proceed to make such final order and decree as equity should require touching the sale of the unsold portion of said lands and real estate and the final settlement of said accounts and division of the profits or clear proceeds of all sales heretofore made or hereafter to be made under the decree of this court on just partnership principles, after duly providing for a return or reimbursement to the heirs and devisees of Henry Seymour, deceased, of his capital originally advanced and invested in said lands and real estate in his life time, with interest thereon, together with the taxes and other charges incurred
205 with interest, at seven per cent., from the date of the several advances so made.

And now, at this day, on filing the report J. Tildon Moulton in said cause, made in pursuance of said order and decree of Oct. 13th, 1865, as master in chancery as aforesaid, and dated July 28th, 1866, on motion of Mather & Taft, solicitors and counsel for said complainant, it is ordered, adjudged, and decreed that said master's report be, and the same is hereby, in all things ratified and confirmed.

And in view of the accounts and evidence appearing in said report and the depositions accompanying the same, together with the admissions of the parties in pleading, and proofs as appearing therein, and in and by said report, this court do adjudicate and find—

1st. That all the accounts of Jeremiah Price, in his lifetime, touching and concerning all moneys by him received from Henry Seymour on the 9th day of May, A. D. 1835, to invest in the lands and real estate aforesaid, and the investment thereof, as well as of all moneys by him received, either from said Henry Seymour or
206 any of the defendants, his heirs and devisees, for the purpose of paying taxes or other charges on said lands, or the expenses incident thereto, were and are fully settled and balanced down to the time of the death of said Jeremiah Price, on the 13th day of July

A. D. 1854, as shown by the several accounts of receipts by him, and his account of countervailing expenditure, all which are attached to the original bill filed in this cause.

2d. The court also find that all the accounts of John High, jr., as sole surviving administrator of said Jeremiah Price, deceased, and as agent employed by the heirs and devisees of said Henry Seymour, deceased, to proceed in the sale of said lands and real estate, including his account of moneys received for payment of taxes, expenses, and other charges from said heirs and devisees of Henry Seymour, deceased; his account showing the expenditure thereof, for the purposes intended; his account of moneys received on sales made by him, or negotiated through him and carried into effect by said heirs and devisees through his agency, and his accounts of the

207 due appropriation thereof in payment of taxes, expenses, or charges of the lands, or in payment of dividends to said several heirs and devisees, to apply upon or as return of capital, taxes, charges, and expenses of said lands and interest, and all and singular his several accounts in any way connected with this suit, or the lands in question, have been and are fully settled and balanced by payments thereof duly made, and a final payment of a balance due from his estate made on the 7th day of December, A. D. 1859, amounting to $10,347 69, paid to Alexander C. Coventry, solicitor and counsel for said defendants in this cause, and agent employed by said heirs and devisees to take charge of all this business on the death of said John High, jr., by Edwin Blackman as executors of said High, the accounts of said High, intermediate the time of filing said bill in this cause and the date of his decease, sufficing to reduce the amount admitted to be in his hands on the filing of said bill from the sum of $18,488 82 to the said balance of $10,347 69, so due when paid over to said Coventry by said High's executor in final settlement and closing up of his account in this suit.

The court also find—

208 3d. That the accounts reported and admitted to be correct by the solicitors and counsel for both parties show that on the ninth day of May, A. D. 1857, the heirs and devisees of Henry Seymour had received as return or reimbursement of original capital and interest thereon for twenty-two years from May 9th, 1835, return or reimbursement of all moneys advanced for taxes and other charges and expenses incident to said lands, and interest thereon from the date of the several advances made to May 9, 1857, and for a surplus of clear profits over and above their said capital and other advances for taxes charged and expenses and interest on all the sum of $20,892 67, from which sum being deducted the aggregate amount due to them at the same date, May 9, 1857, for said return or reimbursement of capital for taxes, charges, and other expenses advanced by them, or by Henry Seymour in his lifetime, and interest, the sum of $16,137 59 there was left a surplus then remaining over in their hands of clear profits amounting to $4,755 10.

4th. The court also find that it was agreed between the parties by their solicitors and counsel that on the remaining accounts

209 after said date of May 9, 1857, no interest should be charged or claimed on either side or by either party in this cause.

5th. The court also find that the sum of $6,715 19 was received by the heirs and devisees of said Henry Seymour, at Utica, N. Y., from land sales in this suit, which did not pass through the hands of said Coventry, or any other agent, which is to be added to the foregoing surplus in the hands of said heirs and devisees of $4,755 10.

6th. The court also find that said A. C. Coventry, as agent for said heirs and devisees of Henry Seymour deceased, from the collections by him made from the sales of said lands or the produce of the lands, received the further sum of $28,977 79, which is to be added to the two last named sums, making in the aggregate the sum of $40,488 08, from which, by agreement of parties, is to be deducted the three following several amounts, viz: said Coventry's account for payment of taxes and other expenses of said lands, $7,878 76; Horatio Seymour's account or statement of expenses of journeys to
210 Chicago from New York State to see to the lands by himself and others interested therein, and a general yearly charge of $100 per annum for twenty-nine years' general oversight of the business of said land, amounting in all to $3,816 75, also for commissions of 5 per cent. charged by A. C. Coventry on receipt of $28,978 79, which commissions amount to $1,448 86. In the aggregate said three last named items amount to $13,144 37, which being deducted from said $40,448 08, there remains in the hands of said heirs and devisees partly in the hands of their said agent A. C. Coventry) a clear surplus over and above the full return of capital originally advanced and over and above all their expenditure for taxes and other expenses and charges of the lands aforesaid, and interest at 7 per cent. on those several amounts down to May 9th, 1857, amounting to the sum of twenty-seven thousand three hundred and three dollars and seventy-one cents, ($27,303 71.)

7th. The court also find that two thousand dollars, part and parcel of said last mentioned surplus or clear profits, it is agreed by
211 both parties is justly chargeable to the estate of Jeremiah Price deceased, having been heretofore paid over by said Coventry to complainant's solicitors by consent of complainant, which is to be accounted for in the just division of said sum of $27,303 71 between the parties to this suit on partnership principles.

8th. The court also find that the further sum of five hundred dollars is justly chargeable to the estate of Jeremiah Price as received from said lands, being an amount paid by Edwin Blackman, as executor of John High, jr., deceased, to complainant's solicitors, but which was never charged in any of the accounts as received by the heirs or devisees of said H. Seymour, deceased.

And the court do further order, adjudge, and decree that from the said sum of $27,303 71, or the balance which may remain thereof as clear profits after taking into account the said two countervailing sums of $2,000 and $500 justly chargeable on partnership set-
212 tlement to the estate of Jeremiah Price, deceased, represented by complainant, be first paid, all the costs in this cause to be

taxed, including therein the costs in the Cook county court of common pleas, before removal of said cause to this court, and the balance which shall remain thereof, being clear profits of the partnership land purchase and sale up to the present time, be equally divided between the parties to this suit—one-half to the complainant and the other half to be held by the heirs and devisees of said Henry Seymour, deceased.

And of moneys remaining by stipulation subject to the order of this court, as a substitute for an injunction, or to be withheld from payment over to said H. Seymour's heirs and devisees for that purpose, said A. C. Coventry, as agent and holder, and the said defendants who are heirs or devisees of said Henry Seymour, deceased, are hereby ordered, adjudged, and decreed to pay over to complainant or his solicitors, as soon as the taxed costs aforesaid can be ascertained and first paid, the full equal share in the surplus aforesaid
213 which is above declared to be due and payable to the complainant as representative of the estate of Jeremiah Price, deceased, which being so paid will close and settle the partnership land accounts so far as sales and collections have progressed.

The deficiency due on decrees against John W. Davis on foreclosure decrees, which was not realized by the sale on said decrees, being the only debt due the land concern that remains uncollected.

9th. The court also find, from the report aforesaid and the proofs made in this cause, that two eighty-acre lots and two certain blocks, Nos. 1 and 2, part and parcel of another lot of forty acres, being the N. $\frac{1}{2}$, are all the lands which by sale have been wholly subtracted from the aggregate of land investments forming the subject of this suit.

One of said eighty acre lots was sold, and has been conveyed to John Wentworth, described as follows, viz: The E. $\frac{1}{2}$ N. E. $\frac{1}{4}$ sec. 18, T. 38 N., R. 13 E.

The other eighty acres sold and conveyed to John W. Davis
214 and described as follows: E. $\frac{1}{2}$ S. W. $\frac{1}{4}$ sec. 36, T. 39 N., R. 13 E. The two east blocks (Nos. 1 and 2) in the N. $\frac{1}{2}$ of S. E. $\frac{1}{4}$ of sec. 12, T. 39 N., R. 13 E., which were not included in said Davis mortgage to Horatio Seymour and others, heirs and devisees as aforesaid, dated Feb. 21, 1857, which mortgage is made an exhibit by a copy thereof exemplified, marked Exhibit F, are the only part of said N. $\frac{1}{2}$ S. E. $\frac{1}{4}$ of sec. 12 aforesaid, the title of which has been conveyed to said John W. Davis.

The residue of said last mentioned premises, as described in said J. W. Davis's mortgage to said heirs and devisees, dated Feb. 21, 1857, and shown on Exhibit F, and also the E. $\frac{1}{2}$ of S. W. $\frac{1}{4}$, sec. 6, T. 38 N., R. 14 E., described in said Davis's, other mortgage of the same date as shown by Exhibit G, have been restored to said land fund, having been purchased on foreclosure sale of said mortgages, given for the purchase money thereof respectively, and on such purchase conveyed by Ira Scott, master in chancery, who made said sales to John F. Seymour, one of said heirs and devisees, and
215 a defendant in this suit, and the court find that said John F.

Seymour holds the title to said two parcels so purchased in, as part and parcel of the partnership lands aforesaid, and as trustee for both the parties interested in this suit in the same manner and to the same extent as the same lands were held as partnership lands held in trust for the parties before the sale of same to said Davis, and before the sale to said John F. Seymour.

And the court do further order, adjudge, and decree that the said two last named parcels (herein after more particularly described) which have been returned to the partnership lands by purchase on foreclosure, together with all the residue of lands enumerated in Schedule B, annexed to the original bill filed in this cause, (more particularly described hereinafter,) except only the two parcels of eighty acres each sold and conveyed as aforesaid, and the two east blocks of J. W. Davis's subdivision sold and conveyed as aforesaid, being and still remaining unsold of the partnership lands
216 aforesaid; be sold at private sale by and under the direction of Alexander C. Coventry, who is hereby appointed by the court receiver for that purpose, by consent of parties, that the sales be made with all convenient speed, on the terms following, that is to say, one equal fourth part of the purchase money to be paid down at the time of sale and conveyance, and the residue thereof secured by the purchasers' note or notes and mortgage on the premises sold at one, two, and three years, respectively, in annual payments with interest payable annually.

The taxes and other necessary expenses incident to the lands ad interim to be paid from the proceeds of sale, and that the clear proceeds be brought into court from time to time as fast as received for equal distribution to and among the parties entitled thereto on the principles of this decree. That the premises be advertised for sale in such manner and to such extent as the said receiver shall deem proper. It is also agreed between the parties that the description herein contained of the parcels of land sold at master's sale
217 is taken correctly from the records of Cook county. That the said receiver, on the completion of the sales aforesaid or of any one or more of them, and on the purchaser or purchasers severally complying with the terms of sale and purchase, execute, acknowledge, and deliver a proper deed in fee for the parcel or parcels so sold to the purchaser or purchasers. That the several lots and parcels of land be sold in lots or parcels severally as they stand upon the Schedule B aforesaid or as described in parcels hereinafter unless it shall seem expedient and for the interest of the parties to subdivide some or all the larger tracts into smaller parcels, following the government surveys and subdivisions, in which case they may be so subdivided and sold in smaller subdivisions or parcels.

The village lots in Joliet will also be sold separately or together as shall be deemed expedient, as well as the several lots hereinafter mentioned, (292 in number,) in J. W. Davis's subdivision.
218 And it is further ordered, adjudged and decreed, that all the costs and expenses of said sales, including the receiver's fees, commissions, and disbursements, and any costs which may become due

to the clerk or other officers of court, to be taxed hereafter or after the entry of this decree down to the end or close of all proceedings in this cause, be paid out of the proceeds of said sale to the persons properly entitled thereto, and the receiver is hereby charged to see to the payment of the same, and with his report of sale to produce and file proper receipts and vouchers therefor. It is further ordered, adjudged, and decreed that the deficiencies due upon the two decrees of foreclosure by said heirs and devisees against John W. Davis, which the purchase money on said sale was insufficient to meet, be also collected by the receiver in the best manner possible, and if expedient in his opinion, be compromised for such sum as he can obtain therefor.

The deficiency in one case being $6,336 82, on 22d Nov., 1862.

In the other case $5,335 54, on June 17, 1862.

In all $11,672 36—amount of deficiencies.

And it is further ordered that the receiver bring into court
219 all the clear proceeds of sale as fast and as soon as realized and received by him, and pay over the same to the clerk to be by him held subject to equal division and distribution to and among the several parties interested according to the basis or principles of joint and equal participation therein as heretofore established and decreed by the court, and as the court shall from time to time order. And it is further ordered that any other question touching the equitable rights of either party that may hereafter arise and which has not yet been adjudicated, may at any time be brought before the court on motion and notice to the other party, and the decision thereupon be had at any time before a final close of the case, and every such question is hereby reserved for future adjudication.

The lands and real estate subject to sale under this decree are described as follows:

220

In what part of section.	Number of section.	Number of township.	Number of range.	Number of acres.
W. ½ N. E. ¼	24	34 N.	8 E. q 3 p. m.	80
W. ½ S. W. ¼	22	34 N.	8 E. do.	80
W. ½ N. E. ¼	20	34 N.	8 E. do.	80
S. fractional N. E. ¼	32	34 N.	8 E. do.	5.07
W. ½ S. E. ¼	30	36 N.	10 E. do.	80
E. ½ S. E. ¼	30	36 N.	10 E. do.	80
E. ½ S. E. ¼	34	35 N.	10 E. do.	80
W. ½ S. E. ¼	34	35 N.	10 E. do.	80
S. E. ¼	36	35 N.	10 E. do.	160
S. W. ¼	2	37 N.	11 E. do.	160
W. ½ N. W. ¼	2	32 N.	13 E. do.	79.69
W. ½ N. E. ¼	22	39 N.	13 E. do.	80
W. ½ N. W. ¼	2	38 N.	13 E. do.	78
W. ½ S. E. ¼	28	39 N.	13 E. do.	80
W. ½ S. E. ¼	33	38 N.	14 E. do.	80
W. ½ S. W. ¼	32	41 N.	14 E. do.	80
E. ½ N. W. ¼	22	38 N.	14 E. do.	80

In what part of section.	Number of section.	Number of township.	Number of range.	Number of acres.
E. ½ S. W. ¼	22	38 N.	14 E q. 3 p. m.	80
E. ½ S. W. ¼	6	38 N.	14 E....do.....	80
W. ½ N. W. ¼	32	41 N.	14 E....do.....	80
E. ½ S. W. ¼	29	33 N.	8 E....do.....	80
E. ½ S. W. ¼	22	39 N.	13 E....do.....	80
E. ½ S. E. ¼	14	38 N.	12 E....do.....	80
E. ½ S. E. ¼	4	38 N.	13 E....do.....	80
E. ½ S. E. fractional ¼	32	34 N.	8 E....do.....	79. 96
W. ½ S. W. ¼	18	38 N.	13 E....do.....	80
W. ½ N. W. ¼	30	38 N.	13 E....do.....	80. 44

221 Also lots numbers 1 to 53 inclusive (consecutively) in block number three (3.)

Lots numbers 1 to 53 inclusive (consecutively) in block number four (4.)

Lots numbers 1 to 53 inclusive (consecutively) in block number five (5.)

Lots numbers 1 to 53 inclusive (consecutively) in block number six (6.)

Lots numbers 1 to 33 inclusive (consecutively) in block number seven (7.)

And lots numbers 1 to 27 inclusive (consecutively) in block number eight (8.)

All in Davis's subdivision of the east 15-16ths of the south half of the north half of the southeast quarter of section twelve (12) town. thirty-nine (39) north, of range thirteen (13) east of the 3d principal meridian, being Davis's addition to the city of Chicago, which several lots (292 in number) were sold and conveyed to John F. Seymour, one of the defendants in this suit, by Ira Scott, a master in chancery of the superior court of Chicago, on a decree entered upon foreclosure of a mortgage executed by John W. Davis to Horatio Seymour and others, heirs and devisees of Henry Seymour, deceased, which mortgage was executed to secure a balance of purchase-money due from John W. Davis and from Usher Parsons on a purchase by them (at first by them severally, but whereof subsequently
221 said Parsons released and sold his interest to said Davis, said Parsons being also made a party to said decree of foreclosure) from said heirs and devisees of a part of the north half of the southeast quarter of section twelve (12) aforesaid, as set off to the heirs and devisees of Henry Seymour, deceased, by a decree in partition wherein the said heirs and devisees, as representing the estate of said Henry Seymour, deceased, were complainant, and the estate of Jeremiah Price, represented by his heirs-at-law, were defendants, in Cook county court of common pleas, which said part or allotment to the heirs and devisees of Henry Seymour, deceased, had been sold to said John W. Davis and to Usher Parsons for the sum

of $48,000, the subdivision thereof into lots and blocks by said J. W. Davis having been made of record at a date subsequent to said sale and the execution of said mortgage, said sale under the decree of foreclosure, following the recorded plat on said subdivision resulting in a sale of the lots constituting the beforenamed blocks numbers 3, 4, 5, 6, 7, and 8 in the subdivision, the other two blocks, numbers 1 and 2, having been deeded at different times to said Davis
223 free of any encumbrance, as will more fully appear in the evidence taken in this cause.

Also lots numbers four (4) and eight (8) in block number eleven (11) in the original town of Joliet, in Will county, and State of Illinois.

Also lots numbers four (4) and five (5) in block number eighty (80) in the school section addition, or part of Joliet aforesaid.

Also lot number fourteen in the same block.

And thereupon the defendants, by their counsel, pray an appeal to the Supreme Court of the United States, which is granted by the court upon the defendants, John F. Seymour and Horatio Seymour, entering into bond, with Alexander C. Coventry and Stanly H. Fleetwood, as sureties in the sum of fifteen thousand dollars.

224 On this day, to wit, the 20th day of November, A. D. 1866, the following stipulation was filed in said entitled cause, to wit:

Stipulation as to decree.

L. C. P. FREER, administrator de bonis non of Jeremiah Price, deceased,
vs.
HORATIO SEYMOUR and others, executors, heirs, and devisees of Henry Seymour, deceased.

In settling the form of the decree in this cause it is understood and agreed by the solicitors and counsel for the parties respectively, that the defendants in said cause prefer a sale of the property to be made by A. C. Coventry, as receiver, at private sale, as preferable to a public sale at auction by a master in chancery, and the order for a private sale aforesaid was so entered at their request.

It is agreed that the description contained in the decree (as drawn up) shows correctly the parcels sold at master's sales to John F. Seymour, such description being taken from the map and plat thereof made and filed of record in the recorder's office of Cook county,
225 Ills., as plotted by him after the original sale.

A. C. COVENTRY,
Sol. for Defendants.
H. F. MATHER & TAFT,
Sols. for Compl't.

Indorsed: Filed Nov. 20th, 1866.

WM. H. BRADLEY, *Cl'k.*

On this day, to wit, the 28th day of November, A. D. 1866, came said defendants, Horatio Seymour and John F. Seymour, by their

solicitors, and filed in said clerk's office their appeal bond in said entitled cause, which said bond is in the words and figures following, to wit:

Appeal bond.

In the circuit court of the United States for the northern district of Illinois.

L. C. PAINE FREER, administrator de bonis non of Jeremiah Price, deceased,
vs.
HORATIO SEYMOUR, and ORIGEN S. SEYMOUR, survivors of Epaphro Seymour, as executors of the last will and testament
226 of Henry Seymour, deceased, and the said Horatio Seymour, John F. Seymour, Rutger B. Miller and Mary F. Miller, his wife, Edmund A. Wetmore, trustee of Mary F. Miller, Edward F. Shonnard and Sophia A. Shonnard, Helen C. Lincklain, Roscoe Conkling and Julia C. Conkling, heirs and devisees of Henry Seymour, deceased.

Know all men by these presents, that we, Horatio Seymour, John F. Seymour, and Alexander C. Coventry, and Stanley H. Fleetwood, are held and firmly bound unto L. C. Paine Freer, administrator de bonis non of Jeremiah Price, deceased, in the sum of fifteen thousand dollars, to be paid to said L. C. Paine Freer, administrator de bonis non of Jeremiah Price, deceased, his executors or administrators, to which payment, well and truly to be made, we bind ourselves and each of our heirs, executors, and administrators, firmly by these presents. Sealed with our seals and dated this fifteenth of November, A. D. 1866.

Whereas the above-named Horatio Seymour and John F.
227 Seymour have prosecuted an appeal to the Supreme Court of the United States, to review the decree rendered in the above-entitled suit by the circuit court of the United States in and for the northern district of Illinois: Now, therefore, the condition of this obligation is such that if the above-named Horatio Seymour and John F. Seymour shall prosecute their said appeal to effect, and answer all damages and costs if they shall fail to make good their plea, then this obligation to be void; otherwise to remain in full force and effect.

[SEAL.] HORATIO SEYMOUR.
[SEAL.] JOHN F. SEYMOUR.
[SEAL.] A. C. COVENTRY.
[SEAL.] STANLY H. FLEETWOOD.

Approved.

THOS. DRUMMOND.

Indorsed: Filed Nov. 28th, 1866.

WM. H. BRADLEY, *Clk.*

228 On this day, to wit, the 1st day of December, A. D. 1866, came said defendants, by their solicitor, and filed in said clerk's office their motion in said entitled cause, which said motion is in the words and figures following, to wit:

Motion to amend record.

Circuit court of the United States in and for the northern district of Illinois, chancery.—Oct. term, 1866.

L. C. PAINE FREER, administrator de bonis non of Jeremiah Price, deceased,
vs.
HORATIO SEYMOUR and ORIGEN S. SEYMOUR, survivors of Epaphro Seymour, as executors of the last will and testament of Henry Seymour, deceased, Horatio Seymour *et al.*, heirs and legal representatives of Henry Seymour, deceased.

The defendants in the above entitled cause move to amend the record of this court in said cause above entitled, in this, that the records of said court show that the final decree in said cause was en-
229 tered on the fifteenth day of November, A. D. 1866, when the same should show the same to have been entered on the twentieth day of November, that being the day on which the same was finally passed by this court and then entered, and they here refer to the stipulation heretofore filed in this cause on said twentieth day of November in support of said motion, and the statements and certificate of William H. Bradley, clerk of this court, filed herewith.

Chicago, Nov. 30th, '66.

A. C. COVENTRY,
Sol. for Def'ts.

Indorsed: Filed Dec'b. 1st, 1866.

WM. H. BRADLEY, *Cl'k.*

230 On this day, to wit, the 12th day of December, A. D. 1866, in the record of the proceedings of said court in chancery in said entitled cause is the following entry, to wit:

L. C. P. FREER, administrator de bonis non of Jeremiah Price, deceased,
vs.
HORATIO SEYMOUR and ORIGEN S. SEYMOUR, survivors of Ephaphro Seymour, as executor of the last will and testament of Henry Seymour, deceased, and the said Horatio Seymour, John F. Seymour, Rutger B. Miller, and Maria F., his wife, and Edmund A. Wetmore, her trustee, Edward F. Shonnard and Sophia, his wife, Helen C. Lincklaen, Roscoe Conkling and Julia C., his wife, as heirs and devisees of said Henry Seymour, deceased, survivors, &c. } Chancery.

The court having considered and being now sufficiently advised

upon the motion of the defendants, heretofore filed and sub-
231 mitted by their counsel to amend the record herein, so as to show the entry of the final decree herein as of the date of November twentieth, eighteen hundred and sixty-six, instead of the fifteenth of November, eighteen hundred and sixty-six, overrules the same.

NORTHERN DISTRICT OF ILLINOIS, *ss:*

I, William H. Bradley, clerk of the circuit court of the United States within and for said district, do hereby certify the foregoing transcript, from pages one to two hundred and thirty-one inclusive, to contain a true, full, and perfect copy from the record of all the proceedings which have been had in said court in said cause of L. C. P. Frear, administrator, &c., against Horatio Seymour *et al.*, as the original of the same now remains in my custody, and that the clerk's statement hereto appended is also a correct copy of the original now on file in said cause, and was made at the instance of the counsel for the plaintiff in appeal, and admitted by the counsel for both parties to be a correct statement of the facts therein referred to.

In testimony whereof I have hereunto set my hand and affixed the seal of said court, at my office in Chicago, in said northern district of Illinois, this twenty-seventh day of December, A. D. 1866.

[SEAL.] WM. H. BRADLEY, *Clerk.*

[5-cent. int. rev. stamp.]

232 *Statement of the clerk.*

In the circuit court of the United States of America in and for the northern district of Illinois, in chancery. October term, A. D. 1866.

L. C. PAINE FREER, administrator de bonis non of Jeremiah Price, deceased,
vs.
HORATIO SEYMOUR *et als.*

UNITED STATES OF AMERICA, *Northern District of Illinois, ss:*

I, William H. Bradley, clerk of the circuit court of the United States of America in and for the northern district of Illinois, do hereby certify and state that the final decree in said cause above entitled was delivered to me by the solicitors for the complainant and defendants in said cause on the fifteenth day of November, A. D. 1866, with an understanding between them that the same be by me entered of record on that day, and that the said decree was by me on that day delivered to the Hon. Thomas Drummond, judge of this court for his examination and approval, the court at that time stating that if the same was all right, it could be entered as of that day, said fifteenth of November; that the said decree was by Judge Mather, counsel for the com-
233 plainant, returned to me on the twentieth day of November, A. D. 1866, and was by me on that day entered as of the fifteenth day of November, the record having been by me kept open for that purpose. The parties to said cause having, on the said twen-

tieth day of November, filed in this court a stipulation in said cause in reference to said final decree as required by the court. The terms of the decree had been previously substantially stated to the court, in the presence of the counsels of both parties, and when the decree was handed to the judge, on the fifteenth of November, the clerk called his attention to a particular part of the decree, and on the seventeenth the court spoke of that part of the decree, viz: that relating to the sale of the land privately by Mr. Coventry to the counsel of the plaintiff; and the latter replied that was done at the instance of the defendants' counsel, and the court suggested that a stipulation to that effect had better be filed, which it was understood should be done, and which was subsequently filed accordingly.

WM. H. BRADLEY, *Cl'k.*

December 3d, 1866.

Indorsed: Filed Dec. 3d, 1866.

WM. H. BRADLEY, *Cl'k.*

234 The United States of America to L. C. P. Frear, administrator de bonis non of Jeremiah Price, deceased, greeting:

You are hereby cited and admonished to be and appear at the Supreme Court of the United States, at a term thereof to be begun and holden in the city of Washington, in the District of Columbia, on the first Monday of December next, pursuant to an appeal prayed for and granted from a decree in the circuit court of the United States for the northern district of Illinois, on the fifteenth day of November, in the year of our Lord one thousand eight hundred and sixty-six, wherein the said L. C. P. Frear, administrator, &c., of Jeremiah Price, dec'd, is the complainant, and Horatio Seymour and Origen S. Seymour, survivors of Epaphro Seymour, as executor of the last will and testament of Henry Seymour, dec'd, and the said Horatio Seymour *et al.*, are defendants. to show cause, if any there be, why the decree rendered against the plaintiff in appeal should not be corrected, and why speedy justice should not be done to the parties in that behalf.

Witness the Hon. Thomas Drummond, judge of the circuit
235 court of the United States for the northern district of Illinois, this 28th day of November, A. D. 1866.

THOMAS DRUMMOND.

Due service of a copy of the citation above written upon the complainant personally is admitted.

MATHER & TAFT,
Sols. and Counsel for Complainant.

Supreme Court of the United States.

Supreme Court of the United States.

HORATIO SEYMOUR, and ORIGEN S. SEYMOUR, as executors &c. of HENRY SEYMOUR, deceased; HORATIO SEYMOUR, JOHN F. SEYMOUR, RUTGER B. MILLER and MARY F., his wife; EDMUND A. WETMORE Trustee of MARY F. MILLER, EDWARD F. SHONNARD and SOPHIA A., his wife, HELEN C. LINCKLAEN, ROSCOE CONKLING and JULIA C., his wife, as heirs and devisees of HENRY SEYMOUR deceased, *Appellants*,

v.

LEMUEL C. P. FREER, Administrator of JEREMIAH PRICE, deceased. *Appellees.*

for Appellees
Kernan
Davis

STATEMENT.

This suit was originally commenced in the county court of Common Pleas of Cook county, Illinois in chancery, (p. 3,) on the 3d day of February, 1857, from which court it was removed before answer to the Circuit Court of the U. S. for the Northern District of Illinois, (p. 25 and seq,) in which court the decrees were made which are appealed from.

The object of the suit was to establish the alleged rights of the representatives of Jeremiah Price in and to about 2,440 acres of land, situated in the State of Illinois, which were purchased, and were conveyed, in the year 1835, to Henry Seymour, since deceased

pursuant to an agreement in writing between the said Henry Seymour and the said Jeremiah Price, which is in the following words: (p. 22, 51.)

"This agreement made the 9th day of May 1835, between Jeremiah Price of Chicago, and Henry Seymour of Utica witnesseth: That the said Jeremiah covenants and agrees that he will forthwith devote his time and attention, and exercise his best judgment in exploring and purchasing land to an amount not exceeding five thousand dollars, in the states of Illinois, Indiana, and Ohio, and in the territories of Michigan and Wisconsin, or in such of them as he may find most advantageous to the interest of said Henry, in whose name the contracts and conveyances shall be made and taken. It is understood that the purchases are to be made after full and careful searches and explorations for the most profitable investments on or near the sites or expected sites of towns or places of business, and in general in tracts of ground of moderate extent. And the said Henry covenants on his part to furnish five thousand dollars for the above contemplated purchases; and that the lands purchased as aforesaid shall be sold within five years from the present time; and out of the profits which may be made by such purchase and sale, after charging to the investment the taxes and other charges if any, together with seven per cent interest on the investment and the charges last mentioned, there shall be paid to the said Jeremiah one half of the same, which one half of the profits shall be in full of his services and expenses of every kind in making the aforesaid explorations and searches, and in doing all such other things as may be requisite and proper in making the contemplated purchases. It is understood that the purchases shall be made the present

year, and that no payment for services or expenses will be made except from the profits made as aforesaid."

"JEREMIAH PRICE,"
"HENRY SEYMOUR."

Henry Seymour died in August 1837, (p. 7,) and the defendants in the suit are the surviving executors of his will, and his heirs and devisees, except the defendant Wetmore, who is the trustee of one of the devisees.

Jeremiah Price died intestate in July 1854 (p. 6,). John High Jr., the original plaintiff, was his administrator, but he dying pending the suit, and after filing the bill of complaint, the present plaintiff L. C. P. Freer, was appointed administrator *de bonis non* of Jeremiah Price, and was substituted as plaintiff in the suit.

The bill of complaint states that at the date of the agreement Henry Seymour lived at Utica, New York, and Jeremiah Price at Chicago in Illinois (pp. 3, 4, 22,); and that the contract which is set out (p. 22,) was made in New York; that said Seymour at the time of signing it, advanced to Price the sum of $5.000 pursuant to its provisions, and that Price prior to the 28th October following, invested the whole except about $32 in such purchases of land as were contemplated by the agreement, that small balance being afterward paid or accounted for (p. 5,); that the land purchased comprised $2440\frac{33}{100}$ acres, and a lot in the village of Joliet, all in the state of Illinois, a description of which is in a schedule annexed (p. 13,); that from the time of the purchase to the death of Price, the latter acted as the agent of Seymour and of his heirs and devisees after his death in taking care of the land and paying the taxes, for which purpose Mr. Seymour in his lifetime and his representatives after-

wards remitted the money to Price; and accounts of these receipts and payments are set forth in schedules annexed (pp. 5, 6, 15, 18,); that no sales of any of the land were made within the five years or at any time during the life of Price, "which neglect (it is added) your orator supposes to have resulted from the unfavorable state of the market and the unsalableness of said lands, and the fact, which became apparent that the interests of all concerned and interested therein would be promoted by holding on for better times in the real estate market instead of selling prematurely; and under which circumstances your orator states and shows to the court as his belief that the said Jeremiah Price did not urge and insist upon an early sale of said lands according to the strict requirements of the said agreement in writing;" but nothing was done to release Seymour or his representatives from the obligations of the contract, (p. 6,); that the plaintiff (High) acted as the agent of the representatives of Seymour after the death of Price; that he has effected sales of 200 acres of the land for the price of $69.200, of which $33.598 $\frac{15}{100}$ has been paid; and of this he (High) retained $2.742 $\frac{61}{100}$ for expenses and commissions, and paid $12.366 $\frac{67}{100}$ to the defendants, the heirs and devises of Seymour, leaving in his (High's) hands $18.488 $\frac{43}{100}$; that the original advance of $5000, and the interest and money paid for taxes has been refunded except a small balance (p. 8,) and the $18.488 $\frac{43}{100}$ above mentioned, except the above small sum, is clear profits. The plaintiff claims that, as administrator of Price, he is entitled to a moiety of all the clear profits of the sales of these lands as part and parcel of the personal estate of Price to be administered by the plaintiff (p. 9,). The plaintiff states that he is ready to

adjust the transaction, and agree upon the mode of making sales, but owing to the distant residence of the parties, &c., has been unable to do so; and he has applied to the defendants to concede to him his rights as above claimed by him, and has been met by a denial of these rights; and he fears that if the remaining lands should be sold and the proceeds distributed among the heirs and devises of Seymour, they would on account of their number and residence out of the State be lost; for which reason he seeks the interposition of the court. (pp. 7, 8.)

Prayer that the defendants answer, without oath; that the accounts be adjusted by a master in chancery; that it be declared that the plaintiff, as administrator, is entitled to one half of the proceeds of the sales of the lands made or to be made after paying the original investment, interest taxes and expenses; and that the remaining lands may be sold under the direction of the court; for the appointment of a receiver, and for an injunction and subpœna. (p. 10. 11.)

After the removal of the cause to the circuit court, the defendants demurred to the bill for want of equity, and also for that the plaintiff's claims were barred by lapse of time. (p. 30, 31). Before the judgment on the demurrer, High died, and Freer the present plaintiff was by order substituted as plaintiff. (p. 31.) The demurrer was overruled and leave was given to the defendants to answer. (p. 32.)

The defendants, except Horatio Seymour, then put in a joint and several answer. (p. 33.) They admit the execution of the agreement, the advance by Mr. Seymour of the $5000, its expenditure by Price in the purchase of the land mentioned in the bill, and that the general

charge of it during the five years following the execution of the agreement was committed to said Price on account of his contingent interest and afterwards as the agent of of the heirs and devisees, the defendant Horatio Seymour taking the general charge on behalf of the other heirs and devisees: that Henry Seymour in his lifetime, as defendants believe, was desirous of selling the land, and that said Horatio, acting for the devisees, would gladly have embraced any opportunity to sell at any price which would have afforded a profit however inconsiderable on the cost, and that all the other defendants were at all times ready to join in such sale; but that, shortly after the purchase of said lands, real estate generally, and especially in the northern states declined greatly in value, insomuch that the said lands became unsalable, and so continued during the whole remainder of the period prescribed in the said agreement for the sale thereof; and it was, accordingly, wholly out of their power to sell the same for a sum which would have yielded a profit on the investment therein, computed according to the conditions of said agreement; nor did the said Jeremiah Price, at any time during the remainder of said period, mentioned in said agreement request a sale thereof; and so powerful were the causes that led to the aforesaid revulsion and depression in the marketable value of real estate in the state of Illinois, that although the said Jeremiah Price, as he well understood, was, after the expiration of the said period of five years mentioned in the said agreement, charged with the duty, as sole agent for the devisees of the said Henry Seymour, of seeking purchasers for the said lands, he was unable during his lifetime, so far as these defendants are informed, or have reason to believe, to effect a sale of a single acre of the same upon any terms advantageous to the said devisees. (p. 35.)

As to any cause of action arising out of a neglect of Henry Seymour to sell the lands in five years from the date of the agreement, the defendants plead the statute of limitations of Illinois of five years, alleging that the same did accrue more than five years before the commencement of the suit. (p. 35.) The defendants insist that the agreement did not impose upon Henry Seymour or his representatives any obligations respecting said lands after five years; that Price in his lifetime never intimated that the agreement imposed any such obligations; that after said five years he never claimed any interest in the proceeds of any sales which might be made, nor did he pretend to stand in any other relation to the defendants respecting the lands, than that of their agent, to take care of them and negotiate sales if possible, subject to the approval of the devisees, and for their exclusive benefit. (p. 36.) They admit the sales by High as agent, as stated in the bill; that the amount therein stated had been paid to him, and that he ought to have paid over the balance in his hands to the devisees of Seymour without delay. (p. 37.) They admit the application to them alleged in the bill, and say that they were always willing to allow a reasonable compensation to Price and High for their services as agents, and submit that beyond that the plaintiff has no lawful claim against them. (p. 37.) They deny that the reasons alleged in the bill for the interposition of a court of equity are sufficient; and say that the executors as such have no interest and ought not to have been made parties; that the devisees are well known citizens of the state of New York, and of sufficient pecuniary ability to respond for any thing which may be adjudged against them; and they submit that the prayer for an injunction and the

appointment of a receiver is unreasonable. (p. 37.) This answer was filed, June 27, 1859.

The several answer of Horatio Seymour denies all the allegations of the bill, except such as are expressly admitted. (p. 39.) He admits the agreement; the purchase of the lands as stated; the advance of, and expenditure of the $5.000, except a small balance afterwards accounted for; that the lands were wild and uncultivated, and were situated in Illinois, near Price's residence; that they required no particular care, and no taxes were charged upon them during the five years ensuing the agreement, except a very small sum on the lot in Joliet; that defendant consulted with Price as to their value and the expediency of selling, and relied on his judgement; and that during said five years Price did nothing except what was required of him by his agreement; that at the death of Henry Seymour one of the defendants was a married woman, and two others were infants under the age of twenty one years. (p. 40.) He denies that the omission to sell during the five years was owing to the neglect of Henry Seymour, or of the defendants, or that it was for the mutual benefit of the defendants; "but he avers, on the contrary, that the said Henry Seymour during his lifetime, and the said defendants since his death, have at all times been anxious to dispose of the same if they could do so without loss; and that within said five years, and for a long period thereafter said property could not be sold for the cost, interest, taxes and expenses; and the defendant denies that the said Jeremiah Price did not waive any right, if any he had, to have said property sold within said five years under said agreement; and he avers that said Price waived the sale of said lands in said five years.

And he further avers, that although he, said Price, had a general oversight of the land on behalf of the defendants, and was better acquainted with its value and situation than the defendants, and was consulted by them in regard to its situation, and that they requested him to find purchasers thereof, if possible; yet he, said Price, not only did not ask or advise that the same should be sold under said agreement or otherwise, but during said years and afterwards, he at different times advised against making any sales, and never made any; and this defendant avers that he, said Price, did waive, excuse and release the said defendants from any claim or interest under said agreement; and that the said Price always treated the defendants as the sole owners of said property, and solely entitled to the proceeds thereof, and never pretended to the defendants to have any interest; and that he, said Price, refused and omitted to pay the taxes on said lands, or any portion thereof; but the said Price claimed that he ought to be allowed a reasonable compensation for his services as agent, and not under said contract; and the defendants have always been willing to allow him such reasonable compensation; and the defendant avers that the said defendants have done no act whereby the said Jeremiah Price might claim any right to any share of the profits of said property after the expiration of said five years." (p. 41.) The defendant states that by the legal effect of the agreement Price's interest was to be half the profits to be realized upon a sale to be made in five years, and avers that no profits on sales could be made in five years, and that none were made within that time; and he avers that the defendants have in no way continued or extended the agreement with Price, or with High, or with the plaintiff

beyond the five years. (pp. 41, 42.) As to any claim of the plaintiff for a breach of the agreement in not selling in five years, the defendant pleads the statute of limitations as in the answer of the other defendants; and he answers in the same manner as the other defendants as to the allegation of the extension of the time for making sales; and avers that Price never claimed any interest in the land after the expiration of the five years. (p. 42.) As to the agency and the expenditures of High, he says that after the death of Price he, High, was requested by Horatio and John F. Seymour to find purchasers for the land if he could; but he had no other power respecting the lands; that the contracts for the sale of the parcels which were sold, were executed by the defendants and not by High; that the negotiations for such sales were made by the defendants through High, and were subject to the ratification of the defendants. (p. 43); that High was not employed in the business in consequence of any relationship which he had to Price or to his estate, or on account of the agreement between Henry Seymour and Price; and it was expressly understood between High and John F. Seymour, that High's employment in the business was not to prejudice the defendants in respect to any questions between them and the estate of Price. (p. 44.) The defendant denies that either High as administrator of Price, or the present plaintiff as administrator *de bonis non* were entitled to any share of the proceeds of the sales of the land. (p. 44.) This defendant makes the same answer and admission respecting the sales made through High's agency and the disposition of the proceeds as the other defendants. (id.) The defendant says he cannot answer as to the accuracy of the accounts in the

schedules; he denies that the original advances and all the expenses have been paid and satisfied; or that the sum in the plaintiff's hands belongs to the account of profits on the investment (p. 45;) denies the application alleged in the bill was made to the defendant; and denies that any cause exists for the interposition of a court of equity; he submits that the defendants are improperly joined, for the want of a common interest among them, and denies that any grounds exist for the appointment of a receiver or for an injunction, and prays that the injunction issued may be dissolved, and that the plaintiff may be ordered to pay over to the defendants the monies in his hands.

This answer was filed October 23, 1859. General replications were put in by the plaintiff. (pp. 46. 47.)

The solicitors for both parties entered into a stipulation, December 7, 1859, in which it is set forth that the sum of $10.347.69 of the monies which had been received by High on account of the lands sold, and which had theretofore remained in the hands of E. Blackman, his executor, were placed in the hands of A. C. Coventry, the attorney for the executors and devisees of H. Seymour, with the consent of the complainant. Coventry is to place it at interest until the judgment in the suit shall determine to whom it belongs. The purpose of the stipulation is stated to be to show that this deposit was by mutual consent, "and as a substitute for and equivalent, in security, to the complainant instead of an injunction prayed for in the bill to restrain the payment over of the same to the defendants or any of them." It is to remain within the control of the court. (p. 48.)

The solicitors also entered into a stipulation, June

21st, 1864, by which the statement in the bill of complaint to the effect that $12.366.67 had been paid and distributed by High among the heirs and devisees of H. Seymour, was admitted. There is in that stipulation a further admission by the complainant in these words: "that in the month of May A. D. 1840, at the expiration of the time for sale, stated in the contract between Jeremiah Price and Henry Seymour, mentioned in the pleadings in this cause, the lands purchased under said contract were unsalable, and that it is entirely uncertain how much they could have been sold for, and whether they would even have brought enough to repay the original investment and interest." (p. 49.) The stipulation, and an additional one admitting the correctness of the schedule annexed to the bill of complaint, which sets forth the cost of the land purchased, and the expenses and taxes paid, constitute all the evidence in the case beyond the admissions in the pleadings. (p. 50.)

The case was heard in the circuit court in November, 1864, and was held under advisement until the 13th day of October, 1865, when the first decree appealed from was made. (p. 53.) By this decree it was adjudged that Jeremiah Price in his lifetime, and at the time of his death, was, by virtue of the agreement of 1835, "entitled, as an equal copartner in the profits, to one equal half of the profits made, or to be made from the sale of the lands and real estate" mentioned in the pleadings, after deducting the advance of $5.000 with the taxes, and other charges and interest thereon; that the sales of the land already made by the heirs of Mr. Seymour and the sales yet to be made "are to be deemed and taken as made and to be made on joint account of the estate of the said Henry Seymour deceased, and

of the estate of the said Jeremiah Price, deceased; the heirs or personal representatives of Henry Seymour deceased, being entitled besides return of capital advanced as aforesaid, with taxes, charges, and interest added thereto, to one equal half part of the clear profits remaining over from proceeds of sales made and to be made; and the complainant as administrator *de bonis non* of the said Jeremiah Price deceased, being entitled to the other equal half of the clear profits aforesaid as personal estate of the said Price, in course of administration," &c. The decree further provides for a reference to a master in chancery, named, to take and state the accounts, with detailed directions corresponding with the principles of the decree. (pp. 53 to 55.)

The master's report was filed the 28th July, 1866. (p. 55.) It appears from it that the net profits of lands sold and paid for, after paying off the $5.000 advanced with the taxes, expenses, and interest, is $27.803.71. (p. 58, fol. 131.) Of that sum $500 is in the hands of Messrs. Mather and Taft, the solicitors of the complainant (p. 58;) the sum of $6.715.19 has been paid to the heirs and devisees of Henry Seymour. (p. 68.) The residue appears to be in the hands of A. C. Coventry. It further appears that only two parcels of 80 acres each, and two village blocks have been sold and paid for. Two other parcels were sold but not paid for, and the title to them is in the hands of John F. Seymour, who purchased upon the foreclosure of a mortgage, but he holds the title subject to the execution of the trust. (p. 59.)

No exceptions to the report were filed, and it was confirmed by order on the 24th October, 1866. (p. 85.)

The final decree was made the 15th November, 1866. It appears by it that Ledyard Lincklaen had died. (p. 85.)

It recites the former decree and the master's report. The latter is confirmed. It is adjudged that the amount advanced by Henry Seymour, and all the taxes, charges, and expenses have been settled and balanced down to the time of the death of Price, July 13, 1854. (p. 86;) that the accounts of High as administrator of Price have been adjusted; and the balance due from him $10.347. 69, paid over by Mr. Blackman, his executor to A. C. Coventry, the defendant's solicitor; that the heirs and devisees of Henry Seymour have received $20.892.67, of which the sum of $16.137.59 was for reimbursment of the advance, expenses and interest, and the residue, $4.755.10, is a surplus of clear profits in their hands, (p. 87;) that in addition to the above the heirs and devisees of Henry Seymour have received of the proceeds of land sold, $6.715.19, which is to be added to the above $4.755.10. A. C. Coventry, as the agent for the heirs and devisees of H. Seymour, has received on account of lands sold, $28.977.79, which is to be added to the two last named sums, making $40.488.08, from which is to be deducted by consent, certain sums for taxes paid, expenses and commissions amounting to $13.144.37, leaving $27.303.71 in the hands of the heirs and devisees, (partly in the hands of their agent, A. C. Coventry.) But of this amount, $2.000 has been paid over to the complainant's solicitor, with the consent of the complainant; and it is to be accounted for on the division of the above $27.303.71; and $500 is to be charged to Price's estate for that amount paid by High's executor to complainant's solicitor. It is thereupon adjudged and determined, that from this sum of $27.303.71, or the balance

after taking into account the above mentioned $2.000, and $500, there be first paid the costs of the suit to be taxed, including the costs in the Cook county court, "and the balance which shall remain thereof being clear profits of the partnership land purchase and sale up to the present time, be equally divided between the parties in this suit: one half to the complainant, and the other half to be held by the heirs and devisees of Henry Seymour deceased." (pp. 85 to 89.)

The monies remaining in the hands of Coventry as a substitute for an injunction, are to be embraced in this division, and Mr. Coventry and the heirs and devisees are chargeable with it. (p. 89.)

The decree goes on to state the particulars as to the lands sold and paid for, viz: the two lots of 80 acres each, and the two blocks, and the lands purchased in a foreclosure by John F. Seymour, and declares the latter to be held by said John as partnership lands, and in trust for the parties in the suit. It then adjudges that these lands, and all the residue of the lands originally purchased by Price, under the agreement, which are afterwards particularly specified, be sold at private sale under the direction of A. C. Coventry, who, by consent of parties, is appointed receiver for that purpose, on certain terms of payment and security mentioned. (pp. 90, 91.) The taxes and expenses to be paid out of the proceeds, and the residue to be brought into court to be divided equally between the parties upon the principles of the decree; and certain rules as to the manner of sale are laid down, (q. 90:) The expenses attending the sales to be paid by the receiver out of the proceeds. (p. 91.) The judgments for deficiencies on the purchases to be

collected, if possible, or compromised. The receiver to bring the clear proceeds of the sales into court, and pay them to the clerk, to be divided upon the principles of the decree. Either party may apply for further directions. (p. 91.)

And hereupon the defendants, by their counsel, pray an appeal, &c. (p. 93.)

The remainder of the record consists of a stipulation as to the appointment of Mr. Coventry as receiver; of the appeal bond; and an unsuccesful motion to amend the record by changing its date, and the citation. (pp. 93 to 97.)

POINTS.

POINT I.

No interest of any third party being in question, the sole inquiry is as to the true construction and meaning of the agreement between the contracting parties. There is nothing in the policy of the law, or in adjudged cases, which requires that they should be considered co-partners, or to have a joint interest between themselves, to any extent beyond the explicit language of their contract.

(Hazard v. Hazard, 1 Story's c. c. Rep. 370.)

See Agreement, p. 51.

POINT II.

By the terms and the true construction of the contract, the only compensation which Mr. Price was to have for his services in selecting and purchasing the

land, was the profits to arise upon a sale of it within five years from the date of the contract. This is the express language of the instrument; and there is not one word in it which, by any fair intendment, looks to any general interest in Price in the nature of the interest of a partner in partnership property.

Agreement, p. 52.

(1.) The lands which Price was to select and purchase were to be such as he should "*find most advantageous to the interest of said Henry.*" This contradicts the theory of the complainant that the services of Mr. Price were to be considered as a contribution towards the purchase of partnership property or an equivalent to the money to be advanced by Mr. Seymour, and that they were to have a common interest in these lands. Those words show that the lands were to be bought for the general interest of Seymour, and that the interest of Price was only the special one secured to him by the subsequent provision in his favor. They are the words which would be naturally used in defining the duties of a purchasing agent.

(2.) The provision that the contracts and conveyancies should be made and taken in the name of Seymour, leads to the same conclusion. It is not of course denied but that the title to lands may be held by one of several, partners for the benefit of all; for that sometimes happens. But here there is no reason why Price should not have been the repository of the title, or why it should not have been vested in the two parties, except that the general and

ultimate interest was to belong to Seymour. There is no suggestion that he was not of as much pecuniary responsibility as Seymour, and equally trustworthy. He lived, moreover, in the vicinity of the lands, and convenience would have dictated that he should take the title, except that the lands were to belong to Seymour, unless they could be sold at a profit within the five years. As it was supposed that it might happen (as it did in fact) that a profitable sale could not be made in the five years, Mr. Seymour, as the actual purchaser and real principal in the transaction, was to take the title; and then, if a sale at an advance could not be made, within the time limited, the title would remain where it belonged in the purchaser and owner.

(3.) It is submitted that the language of that part of the instrument next to be considered, renders its construction in this respect perfectly clear. The purchases were to be made "during the [then] present year;" then it is provided "that the lands purchased as aforesaid, shall be sold within five years from the [then] present time; and out of the profits which may be made by *such* purchase and sale there shall be paid to the said Jeremiah one half of the same." *Such* purchase and sale mean the purchase to be presently made, and a sale to be made within five years. If it had been a general partnership enterprise which was in contemplation, the provision would have been that upon *a sale, or any sale* the proceeds beyond the cost should be divided. But as to any sale to be made after that time, there is no provision for a participation by

Price. If it were Price's land from the beginning, or if it belonged to Price and Seymour jointly, or as tenants in common, it might be argued that the time fixed for the sale was modal only, and then a sale made after that day would equally accrue for the benefit of both owners; but the land was to be purchased for and to be paid for by Mr. Seymour to whom as a purchaser it was to be conveyed.

Again: The instrument proceeds: "which one half of the profits," that is, of the profits to be made on *such* sale, namely, a sale within five years, "shall be *in full* for his services and expenses of every kind," &c. Furthermore: "It is understood that no payment for services or expenses will be made by said Henry, except from *the profits made as aforesaid.*" This sentence seems to have been penned for the very purpose of confining and limiting the interest of Price to the profits to be made on a sale within the period fixed, that is the five years, and to exclude him from claiming any other compensation. It in terms, and by the necessary force of the language, excludes the idea of a general or indefinite interest of Price in the land, or in the profits to be realized upon any future disposition of the land, after the expiration of the five years. The decrees appealed from can only be sustained upon the assumption that Price, under the conveyances from the former owners to Seymour, took an equitable interest in an undivided half of the lands, subject only to an incumbrance thereon, for one half of the original purchase price, interest, and expenses. This theory directly contradicts the

explicit terms of the agreement, (which for greater caution are twice repeated, in substance,) which expressly exclude Price from claiming any other recompense for his services than the moiety of the profits arising out of the sale provided for, namely, a sale to be made within the limited period mentioned.

(4.) There is no ground for the suggestion that the provision for a sale in five years was merely directory and modal, and that it might be waived by Price without affecting his rights. All the subsequent provisions securing a compensation to Price are strictly limited to a sale within the period thus defined. He was to have half the profits made by *such* sale. That share of the profits made on such sale was to be *in full* for his compensation; and, to make assurance doubly sure, he was not to receive any thing for services or expenses except a participation "from the profits made *as aforesaid*."

(5.) We might repose safely upon the positive and certain language of the contract; for where a written instrument is neither obscure nor equivocal (which this one clearly is not) interpretation from general reasoning or extraneous considerations is not to be resorted to; yet, if such considerations should be invoked in this case, they would only prove more strongly the interpretation for which we contend.

1. To recapitulate: The speculative enterprise was to be rapidly conducted and speedily wound up. Price was to set about the purchases *forthwith*;

the purchases were all to be made in the then *present year*, and the lands were all to be sold within five years; and the compensation of Price was expressly made to depend upon, and be measured by the results of a transaction thus to be carried on and consummated; and to preclude any pretence of a claim in any other aspect, it is twice inserted that his compensation is to be limited to a moiety of the profits thus arising, and that he is to have no other compensation.

2. The contract as the parties have thus written it, was a reasonable and natural one, and there is no ground for conjecturing, if that were ever allowable, that they meant something beyond or different from what they have said. Mr. Seymour had money which he was disposed to hazard in a transaction in lands of a speculative character. Price was either unable or unwilling to embark funds: he would run no risk of losing money, or parting with it for a long time, nor make engagements to pay it in the future; but he had, it may be presumed, local knowledge and aptitude in selecting lands; it was a time of great activity, especially in locating and settling lands in the West; "sites or expected sites of towns or places of business" were sought for with eager avidity, and they doubled, tripled, quadrupled, or increased in a yet greater ratio, in a few weeks or months in the hands of the fortunate possessors. Mr. Seymour was disposed to enter into this field with a considerable sum of money, and Price was willing, not to embark money, or give

promises to pay it, but to aid Seymour with his local knowledge and active agency for a collateral consideration precisely defined. The question was, how this consideration should be arranged. They might have become jointly interested in the purchases, Seymour advancing all the money in the first instance, subject to an adjustment when the affair should be closed, and a reimbursement of what had been paid for him; but this would have exposed Price to the payment of half the loss, if the concern should prove unprofitable; but he did not, and it is presumed would not agree to share in any loss. What was actually concluded, therefore was to have Seymour become the purchaser with his own proper monies, and Price the purchasing agent, and to pay the latter, (instead of a *per diem* allowance, or a commission on the amount of the investment, or the interest of a partner in the *ultimate* profit or loss,) one half of the profits to be realized on a sale of the lands within five years, and that Price should have no such interest as would in any event subject him to a loss, or compel him to advance money. This was what was actually agreed upon, and what is specified, in the most precise language, in the written argeement. It might happen that the investment would turn out a losing one. Twenty years elapsed in fact, and not a foot of the land had been or could be sold at any profit, however inconsiderable. (p. 35, fol. 75, 76; p. 41, fol. 93.) During these twenty years, the cash advances and the interest thereon had risen to the sum of $16.137.57, or

more than three times the original purchase money, besides the expenses of looking after the land. (p. 57, fol. 131.) A peremptory sale at any time during these twenty years would have resulted in a loss which Mr. Seymour's representatives must have borne alone, as Price and his representatives were in no way bound to contribute. The great bulk of the lands remains unsold to this day, nearly thirty-two years from the time of the purchase; but by a fortunate circumstance, a small portion happened to to be located near a place where a city after several years grew up, and was sold after the death of both the contracting parties for a large amount.

The above remarks are introduced to show that the provision limiting the recompense of Price to the profits which should arise upon a sale in five years, was, under the circumstances, reasonable, and such a one as would be natural to be contained in such a contract; and that there can be no occasion or excuse to change by construction the usual sense of language to accommodate the instrument to an assumed different intention of the parties.

POINT III.

The decrees cannot be sustained upon any idea that Mr. Seymour, or his representatives were in fault for not selling the lands within five years.

(1.) The decrees do not proceed on that ground, or impute any fault of that nature to any one; but

impliedly disclaim any such cause of action. (p. 6, fol. 16.)

(2.) The bill of complaint admits in terms, and a stipulation to stand in the place of evidence, repeats the admission, "that at the expiration of the time of sale stated in the contract the lands purchased under said contract were *unsalable*, and that it is entirely uncertain how much they could have been sold for, or whether they would have even brought enough to repay the original investment and interest.

(p. 49, fol. 113.
p. 6, fol. 16.
and see p. 35, fol. 76, and
p. 41, fol. 93.)

POINT IV.

Assuming it to have been satisfactorily shown that the actual meaning of the contract is such as its language imports, and as has been above stated; and furthermore, that Mr. Seymour or his representatives were not in fault in omitting to sell within five years, it is submitted that the representatives of Price had not, at the commencement of this suit, any interest in the proceeds of the land subsequently sold or in the unsold lands remaining.

POINT V.

The complainant claims, and the decrees proceed upon the principles of the law of partnership; but the claim in that aspect is entirely unfounded.

(1.) The contract of partnership between the parties *inter se se* is a matter of convention; and their respective rights and interests depend upon the stipulations contained in the partnership agreement. As to creditors and other third persons, the rule is more extensive, and many cases are adjudged partnerships as to them which are not such as between the parties themselves.

Hazzard v. Hazzard, 1 Story's C. C. R,, 371 Supra.
Story on partnership, § § 53, 54, 64.
Waugh v. Carver, 2 H. Blackstone, 235, 246.

(2.) Therefore, in the cases which may be cited care should be taken to discriminate. Those of either class in which it is held that a partnership did not exist, sustain the defendant's position in this case. Those where a creditor or third person prevailed in establishing the fact of partnership are inapplicable to this case, which is a controversy between the respective representatives of the alleged parties.

(3.) If the complainant should succeed in maintaining that the agreement constituted Seymour and Price partners, it would not aid him in the slightest degree; for it would still be a partnership upon the terms, and under the stipulations of the written contract, and that limits the interest of Price to one half of the profits to be realized upon a sale in five years, and none were or could be realized within that time.

(4.) To render the fact of a partnership available to the complainant, it must be such a partnership as conferred upon Price an equitable interest in the land. The complainant accordingly contends

that as soon as the land was purchased by Price, he became seized of an equitable interest in an undivided moiety subject to a lieu thereon for one half of the purchase price. taxes &c., and interest This position, even if it should be conceded that a partnership of some kind existed, cannot be maintained.

1. The particular language of the instrument, referred to in Point 2, subd. 1, 2, 3, and the manner of vesting the title, show a clear intention that the land should belong wholly to Seymour, and that what Price was to have contingently was simply to compensate him for his services as an agent.

2. The point has often been decided against the complainant's position in similar case's, and the converse of that position is settled law. (*Smith v. Watson*, 2 Barnwell and Cresswell, 401—9 Eng. Com. Law, 180, K. B.) This is a case entirely in point. One Sampson, (whose assignees in bankruptcy were the plaintiffs,) employed one Gill, who was a broker, to purchase *whalebone*, in which article Sampson dealt; and by agreement was to pay him one third of the profits made on the sale of it for his trouble. The defendants were bankers with whom Sampson kept his account; and the suit was brought to recover an amount in the defendant's hands, which was the proceeds of a bill drawn by Sampson on account of a parcel of whalebone which he had sold. Gill, claiming to be a partner of Sampson by means of the agreement mentioned, indemnified the bankers, who thereupon paid him

the money. It was held that the plaintiffs as assignees of Sampson were entitled to recover.

BAYLEY, J., said; "It is said that the jury ought, upon the evidence, to have found that Gill was a partner in this property. I think, however, that the inference is the other way. All the witnesses speak of Gill as a broker who was to be paid for his trouble in a particular way, namely, by a share in the profits. Now the right to share in the profits of a particular adventure may have the effect of rendering a person liable to third persons as a partner in respect to transactions arising out of the particular adventure, in the profits of which he is to participate; but it does not give him any interest in the property itself which was the subject of the adventure. Gill's right to claim property in the whalebone must arise out of the terms of the bargain with Sampson; and looking to them it appears that it was not joint property. It may be assumed that it was purchased in the name of Sampson only, for Gill was a mere agent, and was to have a proportion of the profits in lieu of brokerage. Considering the question in this view, I am clearly of opinion that Gill had no property in the whalebone, or in the proceeds of the bill."

HELROYD, J.—"I am of the opinion that both the points which have been raised, must be decided against the defendants. Assuming it to have been agreed between Sampson and Gill, that the latter should make purchases of whalebone, and in lieu of brokerage should have one third of the profits arising out of the sales, and that he should even bear a certain proportion of the losses, I am of opinion that although it might make Gill liable as a partner to third persons, yet that it did

not vest in him any interest in the whalebone purchased with the money of Sampson. Such an agreement would not convert that which was obtained by the separate property of Sampson into the joint property of Sampson and Gill. It may be collected from the evidence, that the latter did not furnish any part of the money required to pay for the whalebone, and that the contracts for sale were made not in his name, but in that of Sampson, for Gill was to act as broker only, and to receive a share of the profits in lieu of brokerage. The money paid for the whalebone being therefore Sampson's separate property, and the contracts being made in his name as the purchaser, the property in the thing purchased would vest by virtue of the contracts in him alone. It has been contended that the legal effect of an agreement to allow a broker to share in the profits of goods purchased by him, is to vest in the party entitled to that proportion of the profits the same proportion of the property purchased, and therefore that in this case Gill became tenant in common or joint tenant as to that part of the property. If Sampson had in terms agreed that Gill should have that proportion of the property it would no doubt have become the joint property of the two. But here the agreement is wholly different, and it is perfectly consistent with it that Sampson should retain the entire interest in the property. It may have been a reasonable bargain that Gill on lieu of brokerage, which was a sum certain, should receive a share of the profits, which were contingent and uncertain. But it might be most unreasonable that in consideration of giving up his brokerage Gill should have the same proportion of the property itself, which was purchased with the funds of Sampson. Gill would thereby have a control over the property itself

while Sampson continued the only person *prima facie* and ostensibly subject to all liabilities accruing in respect to it. It would therefore be contrary to the intention of the parties to construe such an agreement to have the effect of giving to the party entitled to share in the profits any interest in the property itself. It may indeed, by a general rule of law founded upon reasons of policy, render him liable as a partner to third persons. But the power over the property remains as it was before the money was converted into goods by the purchasers."

BEST, J., expressed himself to the same effect.

It would be impossible, I submit, to point out any difference in principle between this case and the one on argument. In the particulars in which it is circumstantially different, ours is a stronger exemplification of the principle that an agreement to share in the profits of the sales of property as an equivalent for services rendered in purchasing it, does not carry a joint ownership of the property, than the one cited.

This case of *Smith v. Watson* is cited on seven different occasions by Story in his work on Partnership to establish the principle decided by it; namely at pp. 42, 47, 60, 61, 62, 86, and 523. In Collyer's treatise on partnership (Perkins' Ed.) it is cited with approbation eight times: namely, pp, 22, 23, 24, 33, 162, 752 and 806. At p. 23, the author states the principle, and says: "The point was decided in *Smith v. Watson*. We see no reason for doubting the correctness of the decision." In Bissett's treatise on the law of partnership (*anno* 1847) it is referred to with approval three times, at pp. 19, 30, 34, and in Carey on partnership (1834) it is cited as

undoubted law no less than three times, pp. 8, 16, 212.) In all these treatises the doctrine is laid down in conformity with that case. In *Read v. Hollingshead* 4 Barn. and Cress. 867, [10 Eng. Com. law, 836,] where *Smith v. Watson* was referred to by counsel to take a plain case of a joint speculation in cotton out of the law of partnership because the purchasing partner had for greater caution agreed not to charge brokerage, Chief Justice Abbott after stating that case, said: "Upon this state of facts it was held that Gill had no interest in the goods, *and riyhtly so;* for upon the evidence it plainly appeared that the share of the profits was merely a substitute for the broker's commissions, intended, probably to stimulate the exertions of Gill in buying and selling to the greatest advantage."

In *Meyer v. Sharp*, (5 Taunton, 74,) the title of the defendant to the goods in question depended upon the position that certain persons of the names of Krehmer and Lang, were partners of one Grant. They were the agents of Grant for the purchase of the goods, and by agreement were entitled to one half of the profits of the voyage for which they were purchased, and by which they were shipped. Sir James Mansfield, C. J.: "He (Grant) says that Krehmer and Lang were interested in the adventure; but there is a plain and clear distinction between being partners in the goods, and being interested in the adventure." The judgment was accordingly given for the plaintiff.

The precise point has been decided against the complainant in the Supreme Court of Illinois. (See *Stow and Robinson*, 24, Ill. Rep. 532: more fully stated under the next head.)

I submit that it is perfectly clear that Price took no interest, legal or equitable, in the lands.

(5.) Price was no doubt interested in the profits to be made in the sale of this land, according to the provisions of the agreement. It was not, however, the interest of a partner; but it was the interest which every party to an executory contract has in having the stipulations in his favor performed by the other party. A personal action at law against the delinquent party, or against his personal representatives is the ordinary remedy for the breach of such an agreement. (*Stow v. Robinson*, 24 Ill. 532, supra.) It is the only one, unless special circumstances intervene to make it unavailable, when, in certain cases, a resort may be had to equity.

1. There are no such difficulties in this case. There is no allegation that the estate of Henry Seymour is not entirely solvent.

2. The complainants' difficulty is, *first*, that Price waived the performance of the agreement; *second*, that, upon the concession in the bill of complaint, and by an express stipulation of the solicitors, no damages resulted to Price from the failure to sell in five years. It is admitted that no profits would have resulted from such a sale (p. 6, fol. 15; p. 49, fol. 113); and *third*, that if there was a cause of action arising out of a breach of the agreement, the period of limitation of such action had run more than three times when the suit was com-

menced. The five years expired May 9, 1840, and the bill was sworn to February 3, 1857, (pp. 51, 11.)

Session Laws of Illinois, Feb. 10, 1849, p. 132.
Cooke & Co.'s Edition, vol. 2, p. 752.

(6.) There was no partnership for any purpose in this case between Seymour and Price.

1. This is a question of common law, and the judgment of the English Courts, and of the Courts of the several States of the Union in which, as in Illinois, the common law prevails, and of the Federal Courts in cases arising in such States, are authorities on this branch of the law. The systematic treatises on the law of partnership are also high evidence of the law of this case.

Rev. Stat. Ill., 1845, ch. 62, § 1.
Cooke & Co.'s Statutes, vol. 1, p. 720.

2. It is well settled law that a man may employ another as an agent or subordinate in his business, and agree to pay him a proportion of the profits, if any shall arise, without giving to the party employed the rights, or subjecting him to the liabilities of a partner. Such was the contract in this case. Price was to have one-half of the profits which might arise upon a sale made in five years, which was "to be in full for his *services and expenses of every kind* in making the aforesaid explorations, searches, and in doing all such other things as may be requisite and proper in making the contemplated purchases;" and this is followed, in the instrument, by a negative of any other compensation.

Story on Partnership, § 32: "If a party have no interest whatever in the capital stock, and, as between himself and the other parties, has also no rights as a partner, or no mutuality of powers and duties, but is simply authorized as an agent, and is to receive either a given sum out of the profits, *or a proportion of the profits*, or a residuum of the profits beyond a certain sum, *as a compensation for his labor and services* as *agent of the concern and not otherwise*, he will not be deemed a partner from that fact alone; not a partner with the others *inter se se*, for that would be contrary to their intentions and objects; nor as to third persons, because the transaction admits of a different interpretation, and may justly be deemed a mere mode of ascertaining and paying the compensation of an agent as in a naked case of agency. In such a case it may be properly enough said that the agent is entitled to a share or portion of the profits, liquidated or unliquidated, and therefore he has, in a certain sense, a community of interest therein with the actual partners; but he does not participate therein as an owner *pro tanto*, or as possessed thereof *per my et per tout*, or as clothed with the rights and powers and duties of a partner. He has only a limited interest therein, either as entitled to a fixed sum to be paid out of the profits, or as entitled to a lien thereon, or as possessed of an an *undivided portion thereof* as a tenant in common."

See also *Id.*, §§ 36 and 38.

Smith's Mercantile Law, p. 47: "To constitute such a community of profits as is intended to create a partnership, a partner must not only share in the profits of his companions, but must share in them as a principal; he must not be a mere agent factor or servant, receiving in

lieu of wages a sum proportioned to the profits gained by his employers."

Smith v. Watson, supra.
Herketh v. Blanchard, 4 East., 144.

Cary on Partnership, p. 9: "Though a participation in the profits in general makes a person liable as a partner, there are some instances in which the rule does not strictly apply; *as where a share of the profits is given as a payment for labor.*"

Id. p. 10: "An *agent* who receives a proportion of the profits, but has no interest in the capital, is not liable as a partner."

See *Meyer v. Sharp*, 5.

Bisset on Partnership, p. 18: "So when A. purchased two bullocks and put them to depasture on the lands of B., it being agreed that the profit to be made, (on the re-sale after they had been fatted on B.'s land,) above £20, at which B. then valued them, *should be equally divided between him and B.*, it was held that A. and B. were merely partners in the profits, and that this was a mode of paying B. for the pasture. Upon the same principle, factors, brokers *and other agents* have been held not to be partners with their principals as to third persons, and *a fortiori* not between themselves and their principals; though there are a few cases of this sort in which a partnership has been held to exist as regards third persons, but not *inter se.*" Among the cases last referred to the writer instances *Smith v. Watson supra,* as to which he says truly that the suggestion in the opinion of the Court that there was a partnership as to third persons, was merely an *obiter dictum.*

The foregoing references show the sense of the English Courts and systematic writers on this question; and that Price, upon the facts of this case, was not a partner in any sense.

The rule has been generally, I think I may say universally, adopted in this country.

In New York:

1 Denio, 137, *Burckle v. Eckhart.*

Suit by Burckle as a creditor of the firm of Gibb & Co. to recover the price of a quantity of Western produce sold to that firm. The action was brought to charge the defendant Eckhart as a partner of the firm. The evidence to charge him was this: "As the house required assistance in the out-door part of their business, they employed Eckhart the defendant to attend to the purchasing and forwarding of Western produce, and, as a remuneration for his trouble, *he was to receive one-fourth part of the profits* coming to Gibb & Co. from that branch of the business." *Held*, that there was no partnership. Bronson, C. J.: "It is quite clear that there was no partnership as between the parties to this arrangement, and I think there was none in relation to third persons." "It is undeniably true, as a general rule, that a communion of profits will make men partners, and draw after it a liability for losses. But it is abundantly settled that the rule is not universal; and the exception which will best reconcile the cases is least liable to abuse, and is so distinctly marked that it can be easily administered, is that which allows one man to employ another as a subordinate in his business and agree to pay him out of the

profits, if any shall arise, without giving the party employed the rights, or subjecting him to the liabilities, of a partner."

1 Comstock, 132, S. C. (New York Court of Appeals.) The above judgment was affirmed on appeal.

20 Wend., 70, *Vandenburg v. Hull.* — The question was whether one Sherwood was a partner with the plaintiffs. He was employed as an agent of the plaintiffs in an iron foundry, and was to have an annual salary of $300; "and in addition to this salary, it was agreed that *he should have one-third of the profits of the foundry*, if any were made, and that he had nothing to do with the losses."

By the Court, NELSON, C. J.: "It appears to me that the case is not one of partnership, but falls within the class of cases where a share of the profits is given and intended as payment for the labor of the party. It is like the case of an agent who received a proportion of the profits whenever he could obtain a stated sum on the sales, by way of remuneration for his labor," &c.

25 Barber R., 13, *Fitch v. Hall.*—W. and B. were engaged in business at Albany. Hall, the defendant, lived at Providence, R. I. W. and B. bought a quantity of hay in Albany county on credit of a person who subsequently assigned the demand to the plaintiff, and W. and B. shipped the hay to Hall at Providence *under an arrangement that he should sell it, and return to W. and B. its cost and one half of the profits, retaining the other half for his own compensation.* The suit was by the assignee of the seller of the hay to charge Hall for the price as a partner with W. and B. *Held*, on the author-

ity of *Burckle v. Eckhart*, (1 Denio, 337,) that Hall was not a partner, and was not liable.

This agreement was precisely like the one before the Court, except that the agency was in selling instead of purchasing, which certainly is not a material distinction.

Oyden v. Aston, 4 Sandf. S. Court Rep., 311; dictum at p. 321; *Chase v. Barrett*, 4 Paige 148.

The foregoing citations show conclusively, that the law of New York is as we have shown the common law to be, *viz.*, that compensating an agent by allowing him a share of the profits does not make him a partner.

IN MASSACHUSETTS:

14 Pick, 192 *Turner v. Bissell et al.*

The suit was against Bissell and Root to recover for certain cotton warps (to be used in manufacturing satinetts) sold and delivered to Root. The plaintiff claimed that Bissell was a partner with Root, and hence was liable for the warps. Bissell and Root conducted business under the following agreement: Bissell was to furnish wool and Root to manufacture it into satinetts, furnishing the warps, Bissell was to sell the cloth and pay Root 40 per cent. of the sales. Certain expenses were to be borne equally. *Held*, that there was no partnership and that Bissell was not liable.

Per *Wilde, J.*: "The question submitted is whether the defendants are liable in this suit as partners. It is admitted that they were not partners *inter se*, for by the terms of the agreement they had not a mutual interest in the profits and loss of the business to which it related,

which is essential to render a partnership complete. But the plaintiff's counsel contend that both the defendants participated in the profits of the business, and were thereby chargeable with respect to third persons. And it is certainly a well established principle that whoever participates in the profits of a trade, or has a specific interest in the profits as profits, is chargeable as a partner with respect to third persons. But it is equally well established that where a party is entitled to, or receives a given sum of money in proportion to a given quantum of the profits *as a compensation for his labor and services*, he is not thereby liable to be charged as a partner."

"And we are of opinion that the present case falls within theis distinction. Th object of Bissell was to have his wool worked into cloth, and he agreed to allow Root, as compensation for manufacturing, an amount of money to be regulated by the amount of sales, and in no other manner was Root interested in the profits." "If Bissell had agreed with Root to pay him a certain sum for his services and for supplying the warps, there could be no pretence for holding them to be partners, and we can perceive no difference in principle arising from the circumstance that the compensation was to be determined according to the amount of the sales."

Denny v. Cabot, 6 Metc. 82. A case to the same effect, in which all the authorities are carefully examined. Decided, A. D. 1843.

In Connecticut:

Loomis v. Marshall, 12 Conn. R. 69.

Action to recover wages for work and labor by an operative in a woolen manufactory. The defendants,

French and Hubbell, were the actual employers of the plaintiff and were confessedly liable. The four other defendants were Marshall, Rockwell, Jarvis, and Bass, and are known in the case as Marshall & Co. The object of the suit was to charge them as partners. The business was carried on under an agreement in writing as follows: Marshall & Co., who lived at a distance from the factory, which was owned or controlled by French and Hubbell, were to furnish a full supply of wool to run the factory for two years. French and Hubbell were to manufacture it into cloth at their own expense. Marshall & Co. were to have the direction of the sales. The expenses of boxing and sending it to market was to be borne in the same proportion as the dividend after mentioned," and "the net proceeds of all such cloth, after deducting the necessary and incidental expenses of traveling and other proper charges of sale, are to be divided as follows, viz: said Marshall & Co., are to reserve and keep to themselves fifty-five per cent. of the avails of said cloths, and are to pay over to French and Hubbell forty-five per cent. of the avails of the same." It was held that Marshall & Co. were not partners of French & Co., nor liable to the plaintiff. The opinion is by HUNTINGTON, J., and is very long and able. The conclusion is as follows: "If the views we have thus expressed be correct, the case before us is not one of partnership, but is properly referable to that class of cases in which one party receives a share of the profits or avails *as a compensation for services rendered, labor performed, and expenses incurred*, in the business." It is added: "Were we to hold that this agreement constitutes a partnership, we think we should change the existing law as to factors, brokers, *agents*, ship-masters

and seamen who share in the profits by way of commission or in lieu of wages;—should introduce great perplexity in the adjustment of their legal rights and remedies; should establish a doctrine which would constitute landlords and tenants where farms are taken on shares, partners in all contracts relating to the occupancy and improvement of the farms, and declare to the enterprising citizens of our country who possess industry and skill but are without capital, that they can neither improve farms, manufacture goods, [and he might have added, *act* as agents in exploring and purchasing wild lands,] nor be employed as mechanics for a compensation proportioned to the avails of the sales, the product of their labor and skill, without involving themselves and their employers in such responsibility as partners as would, to a considerable extent, deprive them of employment."

IN PENNSYLVANIA:

Miller v. Bartlett, 15 Serg. and Rawle, 137.

Head note: Agreement between B. and H. that H. should give his attendance and services in a grocery store then carried on by B., and for such services B. should pay H. a salary of $1.000 per annum, *as well as to pay and allow him a commission of seven per cent. on the profits arising from goods sold*, after deducting the said salary and rent of the store, which agreement was carried into effect. *Held*, not to constitute H. a partner. "The action was to recover the amount of certain promissory notes given to the plaintiff a creditor of the concern, and the object was to charge H. as a partner. GIBSON, J., who gave the opinion of the court, was not well satisfied with the rule, though he conceded that

it was firmly settled. He concluded by saying: "It seems, then, that however we may be dissatisfied at the conclusion at which the English Courts have arrived, yet the question proposed to the court below, *is no longer open to debate*, and we are satisfied that there is no error in the record."

IN NEW JERSEY:

Perrine v. Hankinson, 6 Hals., 181, S. P.

IN THE SUPREME COURT OF THE UNITED STATES, IN ERROR FROM THE DISTRICT OF MISSOURI:

Berthold v. Goldsmith, 24 How., 537.

The plaintiff was a merchant at Baltimore, and the defendants commission merchants at St. Louis, Missouri. The plaintiff sent to the defendants a quantity of cigars to sell on commission, which the defendants received and agreed to sell. Soon afterwards, on making a change in their business, the defendants turned over the cigars to an auction house, who sold them at a loss. It was for this alleged breach of duty in the defendants that the action was brought. The defendants sought to exonerate themselves by showing that they had acted, in delivering the cigars to the auction house, by the direction of one Hook, who, they alleged, was a partner of the plaintiff, and hence authorized to give the direction; and whether he was such partner was the question in the case. The facts regarding that question were as follows, as stated in the opinion of the Court: "It seems that Hook wanted employment, and the plaintiff wanted to extend his business. They accordingly agreed to make an effort of that kind, and, if successful, Hook should have half the profits, with a guaranty from the plaintiff

that his compensation should amount to $1,800. Pursuant to this understanding, Hook went to St. Louis," &c. He negotiated the original arrangement for the consignment of the cigars to the defendants, which the plaintiff subsequently ratified; and he afterwards gave the direction on which the defendants relied. *Held*, that Hook was not a partner, and defendants were not justified in acting upon his directions. Extract from the opinion of the Court by CLIFFORD, J.: "Merchants are obliged to have clerks, and sometimes find it necessary to employ brokers, or special agents, to effect sales; and it is no more detrimental to their creditors that such employés should be paid out of the profits of their trade than from any other source of income within their disposal. Unless the supposed dormant partner is in some way interested in the business *as principal*, it is plain that he cannot bring suit as a partner, and go into equity to compel an account; nor can it be held that he has any such lien on the profits as a Court of Equity can enforce; and if not, then his condition is the same as that of an ordinary creditor, and he must pursue his remedy against his employers. (*Dewey et al. v. Cabot et al.*, 6 *Metc.* 90; *Vandenburg v. Hull*, 20 *Wend.*, 70.) Repeated decisions have recognized this distinction, and although it may happen, as heretofore, that cases will arise on one side or the other of the line, approaching in their facts so near to each other that the difference between them may appear to be unsubstantial, yet the distinction itself, we think, is founded in reason, and that the only difficulty is in the application of the principle on which it rests."

IN ILLINOIS:

Stow v. Robinson, 24 Illinois R., 532.—This case is so

similar to the present in its principal features, and is moreover so important as a judgment of the highest Court of the State in which the decrees now under review were made, that it must be fully stated. The agreement between the parties was in the following words:

"Articles of agreement made and entered into between C. C. Robinson, of the city of Chicago, county of Cook, and State of Illinois, party of the first part, [the defendant] and David Rattray, of the same place, party of the second part [complainant.] Witness, that the said party of the first part has purchased block No. 43 of the subdivision of the Trustees of the Illinois and Michigan Canal, of section No. 7, township No. 39, range 14 East, third P. M.; and said Robinson hereby agrees that he will, in consideration with said Rattray, go on and get said block sub-divided as they shall mutually think proper, and for the interest of the parties; and said Rattray is to dispose of the same, either at private or public sale, as soon as practicable and thought proper by the parties, for one-fourth down and the remainder to be secured by notes on one, two, and three years from the first day of May, 1849, in equal annual payments, and bearing interest from date. And the said Robinson agrees that he will, upon the payment of one-fourth in money, and secured by notes as stated above, execute his bond for a good and sufficient deed of conveyance when such notes are paid in full, provided such sale shall not average less than $1,200 in the aggregate. It is further stipulated and agreed, that said Robinson is first to receive the amount of all money paid out for said purchase of said block or blocks, which is $965, together with interest on the same; *then the balance to be equally divided between the parties;* for which privilege the said

Rattray is to plot, survey, or sub-divide the said lot or block, and advertise and sell the same, at his own expense; which conditions well and truly to be made, the said parties mutually bind themselves, heirs, executors, administrators or assigns. Witness their hands and seals, this 15th day of May, A. D. 1849.

"C. C. ROBINSON, [seal.]
"DAVID RATTRAY." [seal.]

The complainant alleged and proved that Rattray went on and sub-divided the block into 72 lots, of which he sold 19 for $977, and paid Robinson $866.62; that Robinson then stopped the sale of the lots, and refused to permit any more to be sold, or to make any more title papers.

The complainants were the heirs and personal representatives of David Rattray; and they filed their bill against Robinson to compel the performance of the above agreement, praying relief in the alternative, either that they might be permitted to go on and complete the sales, or that, on their paying the balance which Robinson had paid for the block and the interest, the residue of the lots be divided, or that the lots be valued and the complainants be paid by the defendant one-half of the valuation. The Court below dismissed the bill, and the decree was affirmed by the Supreme Court. The opinion was by WALKER, J. He says; "The bill proceeds upon the supposition that Rottray by the agreement acquired an immediate vested interest in the land itself, and not in the proceeds realized from its sale. And the question whether the Court erred in dismissing the bill depends upon whether that is the true construction of the contract. If it is, and the agreement is capable of being

executed, then a specific performance of the contract may be decreed; otherwise the bill was properly dismissed. The contract *expressly stipulates for the performance of labor and the exercise of skill by Rattray, and for a compensation therefor by a division of the profits which might be realized over and above the original cost of the land. It contained no agreement for any conveyance of the portion of the land at any time from Robinson to Rattray, or of any interest in it.* But by the terms of the agreement Robinson was to retain the title until the sales should be made and the purchase money paid. Until that occurred, it was the manifest intention of the parties that Robinson should not part with the title, and before he even obligated himself to make a conveyance, Rattray was to make the sale." "But it is insisted that Rattray was prevented by the defendant in error [Robinson] from executing his part of the agreement, by stopping the further sale of the lots. If this is true, and Rattray was in no default, on his part, an action at law accrued for a breach of the contract, for the recovery of all the damages he had thus sustained; or Rattray might have compelled him by bill to permit the sale of lots to proceed, and to keep his part of the contract, as he was then able to render the service which Robinson had contracted to receive. If there was such a breach of contract by Robinson as is alleged, the action at law which then accrued undoubtedly survived to Rattray's representatives. *If there is any remedy in the case, it is at law, and clearly not in equity, and the parties must be left to seek their rights in that Court.*"

The following suggestions connected with this case are submitted:

1. It should be kept constantly in mind that in our contract the only sale in which Price was to have any interest was one to be made in five years; and that that period elapsed without a sale, and without the fault of either party.

2. But independently of that circumstance, (which is a controlling one in every view which can be taken of this case,) the case cited is decisive upon every point. It is precisely similar in principle.

3. In the case cited, Robinson was the owner of the land prior to the contract, while in our case it was to be purchased with Seymour's money, and to be conveyed to Seymour, and the stipulations concerned the land so to be purchased and conveyed. This difference is merely circumstantial, and does not affect the principle.

4. In both cases the meritorious cause of the compensation to be made by the owner of the land to the other party was the *services* of such other party respecting the land. In *our* case it was the selection and purchasing it for Seymour and with his money. In the other case it was the plotting, surveying, sub-dividing, advertising and selling. The difference in the kind of service is of no materiality. It is merely circumstantial, not affecting the principle; the services in both cases being collateral to the title, and contracted for as a means of carrying out the views of the owner in bringing it into market. If in Robinson's case the contract created no interest in the agent in the land, as the court decided, the contract in our case certainly created no interest in Price.

5. In both cases the party who was to make the sale had died, leaving the land unsold.

6. Under a state of facts precisely similar in principle to that presented in this case, the Illinois Court decided that the representatives of the agent had no remedy in equity. A similar decision should be made here.

7. As to the remedy at law, our case proceeds upon an express concession that Seymour was without fault in omitting to sell within the time agreed on, while in Robinson's case there was a clear violation, by the owner of the land, of the stipulations of his contract in favor of the agent.

POINT VI.

The rights of Price and his representatives were barred by the lapse of time.

(1.) Any personal action by the representatives of Price for not selling in five years according to the contract, was long since barred, as has been already shown.

(2.) The remedy in equity, if there was any, is sought after the lapse of so long a period that upon settled principles of equity the demand will not be enforced. It will be considered a stale demand.

1. The five years fixed for the sale of the land expired on the 9th day of May, 1840, and the suit was brought on the 3d day of February 1857, an interval of nearly 17 years.

2. Price died in July, 1854, more than fourteen years after the alleged default in selling, (p. 6, fol. 16.) He never during his lifetime made any claim to an interest in these lands. He knew the language of the contract, and acquiesced in its provisions. The fact that he attended to the payment of taxes with money remitted by Mr. Seymour's representatives is admitted by the complainant to have been in the character of their agent, (Bill of Complaint, p. 5, fol. 14.) High, the administrator of Price, was employed by the heirs and divisees of Seymour *as their agent*, and he admits that he acted solely in that character, and he was in fact paid commissions as agent, (Bill, p. 7, 8, fol. 19.) The existence of these agencies does not imply any interest in the agents in the subject of the agency. The fact that they acted distinctly as agents rebuts to some extent the idea of any other relation. Price was by occupation a real estate agent, and it was very natural that he being on the spot and knowing the situations of the lands from having been employed to purchase them, should be further employed by the heirs and devisees who were the owners in receiving and disbursing their money in paying the taxes, and it was also natural that High, who, as Price's personal representative, had possession of his lists and memoranda, should have been continued in that agency. The distant residence of the heirs, and the infancy of several of them made the employment of an agent at the West a necessity.

There has never been the slightest recognition by the real or personal representatives of Mr. Seymour of any interest in the land in Price or his representatives, nor any claim on the part of Price or his representatives of any such interest, until about the time of the commencement of this suit. The complainant and his predecessor, High, having the custody of the correspondence and papers of Price were in a situation to prove any such recognition or claim if it had existed. They were challenged to make such proof by the explicit denials and averments of the answers, (p. 36, fol. 79, 80; p. 42 fol. 97.) And yet the complainant made no proof of any such claims on the part of Price or his representatives, or of any recognition of an interest in them on the part of the representatives of Mr. Seymour.

3. The Court will find in the following authorities the principles upon which Courts of Equity refuse to interpose when stale claims are sought to be enforced.

Story's Eq. Juris. § 776.
Hepwell v. Knight, 1 Young & Coll, 415.
Taylor v. Louworth, 14 Pet. 175.
Loyall v. Collett, 4 Bro. C. C. 471.
Harrington v. Wheeler, 4 Ves. Jr. 686.
Brsahear v. Gratz, 6 Wheat. 540.
Brown v. Cannon, 5 Gilm. 180.
Anderson v. Frye, 18 Ills. 95.
Bishop v. Newton, 20 Id. 178.
Stone v. Pratt, 55 Id. 35.
Kemp v. Humphries, 13 Id. 577.

It is a circumstance of great weight that during all this time the burden upon the heirs and devisees of

Mr. Seymour was increasing at a rapid rate by the accumulation of interest and taxes and the expenses of agency. Good faith required that Mr. Price should have advised the other party that he claimed a continuing interest if such was the fact.

Bradshaw v. Gratz, supra.
Rogers v. Saunders, 10 Maine. 92.
Cooper v. Brown, 2 McLean, 495.

POINT VII.

Any idea of a continuance of the contract by mutual consent is repelled by the circumstances mentioned under the last point. But, as the contract looked solely to a sale in five years, and limited the interest of Price to the profits to be made upon such a sale, it required an express contract to continue and extend the arrangement to sales to be made afterwards.

POINT VIII.

It is a fatal defect in the complainant's case, that the heirs of Price are not made parties. If his representatives have any interest, such interest is an equitable estate of inheritance in the unsold land, and in the money which is the proceeds of land sold.

(1.) An equitable interest in land belongs to the heirs as fully as land of which the ancestor had the legal seizin.

(2.) When this bill was filed the partnership, if there had ever been one, was long since dissolved. It

was dissolved, *first*, by the death of both parties to it; and *second*, by the adjustment of all accounts connected with it. The bill states, and the report and decree show, that Mr. Seymour's investment and all taxes and expenses and interest had been reimbursed and paid to Mr. Seymour's representatives, (p. 8, fol. 21, 22; p. 87, fol. 208.) Therefore, what remained was upon the principles of the decree, simply and purely land and the proceeds of land sold subsequently to the death of Price. This was real estate and not personalty.

(3.) There were no debts of the supposed partnership. Indeed there never were any debts, and from the nature of the contract never could be any. The land was bought for cash, and the expenses for taxes and management were all paid.

(4.) While we do not deny but that where any part of the effects of a trading partnership are vested in real estate, there is, in equity, a conversion into personality for the purposes of the payment of partnership debts, and for the settlement of partnership accounts; yet, where the partnership is ended, the debts all paid, and no accounts remaining to adjust, the residue of the real estate, according to the late English cases, and the current of authority, goes to the heirs, and not to the personal representatives. We may, perhaps, except the case where by the partnership articles it is expressly stipulated that there shall be an absolute conversion of reality into personality, as was the case in *Nicoll v. Ogden* (24

Ill. 323.) With that exception the principle is absolute, according to the later authorities.

Cookson v. Cookson, 8 Simons, 529.
Thornton v. Dixon, 3 Bro. C. R. 199.
Bell v. Phyn, 7 Ves. 453.
Balmain v. Shore, 9 Id. 501.
Collier on Partnership, 133 and Seq.
Bisset on Partnership, 56, p. 3.

(5.) But however this may be in the case of an ordinary trading partnership where the principal subject of the dealing is personality, and real estate is merely incidental, and we concede that there is some controversy in the books on that point, yet where, as in this case, the whole enterprise is a dealing in real estate, there is not any equitable conversion which ought to turn the succession into a different channel than that which the law prescribes, and there is no fair pretense of a conversion. For instance; every one would feel the absurdity of holding that the estate of Mr. Seymour in these lands went to his executors, instead of his heirs and devisees; and yet, upon the principles of these decrees, Price's representatives (the investment being reimbursed) had precisely the same interest as Seymour's.

POINT IV.

In conclusion: Upon the most ordinary principles of common experience and common sense, the claim of the complainant is unfounded and unjust. Mr. Price performed these services under a very natural, and moreover a very explicit and precise agreement, namely: that he

should have for his trouble one half of the appreciation to be realized from these lands in five years. The chances of the land market turned against him, and he was disapointed. Nearly a quarter of a century afterwards, and when the original parties were both dead, and a new generation had appeared and an entirely new state of things in the price and value of real estate had arisen, his representatives present themselves, claim that the contract was general and indefinite as to time, and not as it was written, precise and explicit, and seek to divest the heirs of Seymour of their patrimony. Right reason and common justice reject the claim as unreasonable and unjust.

H. DENIO,

of Counsel for the Appellant.

U. S. SUPREME COURT.

SUPREME COURT OF THE UNITED STATES.

HORATIO SEYMOUR and ORIGEN S. SEYMOUR, Ex'rs of HENRY SEYMOUR, deceased, HORATIO SEYMOUR, JOHN F. SEYMOUR, RUTGER B. MILLER and MARY F. his wife, EDMUND A. WETMORE, Trustee of MARY F. MILLER, EDWARD F. SHONNARD and SOPHIA A. his wife, HELEN C. LINCKLAEN, ROSCOE CONKLING and JULIA C. his wife, as heirs and devisees of HENRY SEYMOUR, deceased,
Appellants,

vs.

LEMUEL C. P. FREER, Administrator of JEREMIAH PRICE, dec'd,
Appellee.

Points for Appellants.

Appeal by the defendants in the original suit from a decree made in the Circuit Court of the United States in and for the Northern District of Illinois, in Chancery. (Fol. 121 to 126; 202, &c.)

On the 9th of May, 1835, Henry Seymour, represented by the appellants and Jeremiah Price, of whom the plaintiff and appellee is the administrator, entered into the contract, in writing, set out upon page 51.

Contemporaneously with the making of this contract, Seymour placed in the hands of Price the $5,000, mentioned therein, to be expended in the purchase of lands, as provided in the contract. (Fol. 12; 72; 90). And between the 15th of June, and the 28th of October, 1835, Price paid

out of this money, for land and expenses, $4,966; and in March, 1836, he expended, for like purposes, $26 $\frac{25}{100}$, and the small balance was subsequently accounted for. (Fol. 12, 13; Ex. B. pp. 13 and 14.)

The lands thus purchased were unproductive, and consisted of sundry parcels of land, amounting to 2,440 acres, and some village lots, situate in Joliet. The land was all in the State of Illinois, and was, at the time of the purchase, conveyed to Henry Seymour. (Fol. 13, 14; Ex. B. pp. 13, 14.)

The contract was made in the State of New York. (12.) At that time, and until his death, Price resided in the State of Illinois, and Mr. Seymour in the State of New York.

In August, 1837, Mr. Seymour died at Utica, N. Y. He left two sons, viz.: Horatio and John F. Seymour; and four daughters, Mary, the wife of Rutger B. Miller, Sophia, the wife of Edward F. Shonnard, Helen, who subsequently married Ledyard Lincklaen, and Julia, who afterwards married Roscoe Conkling. The two last named daughters were, at his death, and at the expiration of the five years mentioned in the contract, infants. By his will, which was duly proved, he appointed Horatio Seymour and two others, his executors; but his real estate descended to his heirs as in case of intestacy, except the share of Mrs. Miller, which was vested in trustees. (Fol. 18, 19; 81; 91.)

Price died intestate, in July, 1854, in Illinois. (16.)

No part of the lands was sold during the five years specified in the contract. This occurred from the fact that the lands were unsalable, at a price which would have repaid the purchase money, interest and expense; and Price, for this reason, did not desire or request a sale. (Comp't, fol. 15; Ans. 75, 76; 93; Stipulation, last clause fol. 113.)

During the five years mentioned in the contract, there were no taxes upon, or expenses as to the lands purchased,

except taxes upon the lots in Joliet, amounting, in all, to $19.33; and for these, funds were exacted by Price of, and furnished by, Mr. Seymour. (Comp't 14; Ans. 90, 91; First 4 items of Ex. C., p. 15.)

Price, during the life time of Mr. Seymour, and subsequently till his death, acted as agent in paying taxes on the lands. (Comp't. 14; Ans. 90, 91.)

He paid these taxes, and any expense he was to in paying them, on account of Seymour, and with moneys furnished for that purpose. (Comp't. fol. 14; Ex. C. p. 15, &c.)

There is nothing in the case indicating that, from the expiration of the five years mentioned in the contract, Price claimed or suggested that he had any interest in the lands or profits from them. On the contrary, the account he kept indicates clearly he acted for and treated the heirs of Mr. Seymour as the absolute owners. (Heading of acc't, page 15; charging for postage on letters—small items of traveling expense in paying taxes—interest on small sums advanced to pay taxes, &c.—allowing land to be advertised for taxes, if funds were not sent in time; Ex. C. p. 15 to 17.)

On the death of Price, in July, 1854, John High, Jr., and Phebe Meeker, were appointed administrators of his estate. In 1855 Phebe Meeker died, leaving High sole administrator, and this suit was brought by him as such. (17.) High died during the pendency of the suit, and Freer was appointed administrator *de bonis, &c.*, and substituted as the party.

The accounts of Price were closed, and he fully paid for all advances and expenses, during his life. (Ex. C., last items of Price's acc't, p. 17; Ex. D., last items of Price's acc't, 19.)

On the death of Price, the executors and heirs of Mr. Seymour employed John High, jr., to look after the lands,

pay the taxes on the same with funds remitted to him, and to negociate for their sale; and he on such employment acted as agent for them. (Fols. 19, 81, 99, 100.)

This employment and agency of High was in his individual capacity, and did not grow out of, and had no connecnection with, him as administrator of the estate of Price. (19, 100; High's account, pp. 17, 18, 19, 20.)

High acted as an ordinary agent for the heirs, charging and receiving commissions. (See his account above referred to.)

In 1855 and 1856, High, as agent for the heirs, negociated sales of portions of the land, which were consummated by contracts executed by the heirs and the purchasers. (Fols. 20, 82, 100.) And he, as such agent, and for the heirs, received on such sales $33,598,$\frac{10}{100}$ from time to time, before this suit. Of this sum he paid over to the heirs some $12,000; claimed to appropriate some $2,700 for his commissions on sales and expenses, and, having the balance in his hands, commenced this suit as administrator, claiming that, as such, he was entitled to about one-half of it. (Complaint, 20, 21, 23, 26, 27; account, pp. 20 and 21.)

The suit was commenced in February, 1857, in the Court of Common Pleas of Cook county, Ill., *sitting in chancery*, and was subsequently, on the petition of the defendants, removed into the Circuit Court of the United States for the Northern District of Illinois. (Fol. 53 to 62.)

The answers of the defendants are found at folios 70 to 105. Replications were filed. (Pp. 46, 47.) No proofs were taken, but certain facts were admitted by stipulations found at pages 49, 50 and 51.

The cause was heard in November, 1864. (Page 52.)

In October, 1865, the Court made a decree, which is found on pages 53, etc.

Pursuant to this decree a reference was had to a Master, whose report is at page 55, etc.

In November, 1866, a final decree in the cause was made, which is at page 85, etc.

By the decree, the proceeds of the land sold, and the land remaining unsold, are decreed to be *copartnership* property. A receiver is appointed; the money on hand is directed to be distributed according to the decree; and the land unsold, being over 2,000 acres, is placed in the hands of a Receiver, and he is directed to take charge of and sell and convey the same upon the terms specified; and from time to time to pay the money into Court, less his fees and expenses, to be distributed among the parties. (Fols. 122, 123, 124 204, 205; 215 to 219.)

I. The parties were not in any legal sense as between themselves partners, nor was the land purchased partnership property.

1. Partnership is founded on voluntary contract; and whether or not a partnership exists between persons, depends, *as between themselves*, upon the contract which they make.

Story on Part., §§ 3, 5.

2. Persons are frequently held to be partners, as to cre-

ditors and other third persons, where they are clearly not so, as between themselves.

Story on Part., §§ 53, 54, 64.
Waugh v. Carver, 2 *H. Blackstone*, 235, 246.
Chase v. Barrett, 4 *Paige*, 148, 159, 160.

3. In the case at bar, the question arises between the parties themselves. In such case, the *actual intention* of the parties will alone constitute a partnership. In the language of Kent, "*actual intention* is *requisite* to constitute a partnership *inter se.*"

3 *Kent's Comtrs. p.* 27, *marginal paging.*
" " *p.* 25, *of the eleventh Ed.*
Hazard v. Hazard, 1 *Story C. C. R.* 371.
Story on Part. § 32.

4. It is apparent, from the terms and provisions of the contract under consideration, that it was not the *intention* of the parties to be copartners; and that the profits, which it was agreed should be paid over to Price, were to be paid him *as compensation for services merely.*

See Contract, page 51.

(1.) Price agrees to devote his time and attention in making contracts, to the amount of $5,000, for the purchase of such lands "as he may find most advantageous to *the interest*" of Seymour.

(2.) The money to pay for the lands is to be furnished by Seymour; the contracts therefor are to be in his name, and the lands are to be conveyed to him absolutely.

Price is an agent *only* to select and make contracts for the purchase of the lands in the name of Seymour, and with the moneys of the latter. He has no authority to make contracts for their sale on joint account, or even as agent of Seymour.

(3.) Mr. Seymour contracts to sell the lands within five years, and to pay Price one-half the profits which may be made on such sale, "which one-half of the profits shall be in full of his *services*, and expenses of every kind," in making the explorations and purchases.

(4.) This contract, by its terms, excludes any implication that the parties to it are to be partners, or that the lands are to be partnership property, or subject to the rules of law applicable to partnership property. It has every characteristic of an agreement by which Price is to be paid a share of the profits, as a *compensation for his services as agent.*

Story on Part., § § 40, 41, 42.
Hazard v. Hazard, *Supra*, 374, 375, *per Story, J.*
Hesketh v. Blanchard, 4 *East.* 144.
Vanderburgh v. Hull, 20 *Wend.*, 70, 71.
Berthold v. Goldsmith, 24, *Howard U. S.*, 536, 542.
See, also, V. Point of Judge Denio, herewith handed up, and authorities cited, pages 24 *to* 47.

II. Price had no *property* in the lands or in their proceeds, as partner or otherwise. The lands and proceeds were the *sole and exclusive property* of Seymour and his heirs.

1. This proposition, upon the facts of this case, is firmly established by adjudications in England and this country.

   Smith et al, Assignees, v. Watson, 2 *Barn. & Cress.* 400.
   Ib., 9 *Eng. Com. Law*, 180.
   Hazard v. Hazard, 1 *Story C. C. R.*, 374–5, *per Story, J.*
   Stow v. Robinson, 24 *Ill.*, 532.
   Story on Part., § 32.
   Baxter v. Rodman, 3 *Pickering*, 435, 438, 439.
   Meyer v. Sharp, 5 *Taunton*, 74.
   See V. of Judge Denio's Points, and Cases cited, from page 24 *to* 47.

2. The express terms of the contract exclude any implication that Price shall have any property in the lands or their proceeds. The land is to be paid for with money to be furnished by Mr. Seymour; the contracts for the purchase are to be in his name; the title to the land is to be in him exclusively; and he is to sell the land and receive the proceeds. Price is in no manner to act, or have rights, as to the land or proceeds, as *a principal.*

   24 *Howard's U. S. R.*, 536, 542–3.

3. This is the reasonable construction of the contract, as

to the lands purchased and their proceeds. It is obviously contrary to the intent and meaning of the parties to the contract, to hold that Price has, by virtue of it, such an interest or property in the lands that he can have them taken from Seymour, placed in the hands of a receiver, and sold by the receiver upon terms prescribed by the Court.

4. It is a well settled principle of law, that there is a class of contracts by which one party agrees to perform services in an adventure, and the other agrees to pay him a share of the profits as a compensation, where the parties are not copartners, and the property is not copartnership property.

(*See authorities Supra.*)

If the contract under consideration does not fall within this class, it is submitted, that it is difficult to draw one, excluding the relation of copartners.

III. By the contract, the only compensation which Price was to have for his services, was one-half of the profits, which might be made by a sale of the lands *within five years* from the date of the contract. If the lands could not be sold within that period at a profit, he was to have no compensation. (See contract, p. 51.)

1. This is the express language of the contract made by the parties.

(1.) The contract is dated May 9, 1835; and Price agrees he will forthwith devote his time to the purchase of lands which he shall deem most advantageous to the interest of Seymour, and which are to be paid for by the latter, and conveyed to him. (Fol. 116.) All the purchases are to be made during the year 1835. (117.)

(2.) Seymour covenants "that the lands purchased as aforesaid, shall be sold within *five years* from the present time, (*i. e.*, the date of the contract,) and out of the *profits* which may be made by *such* purchase and *sale*, (*i. e.*, within five years,) * * * there shall be paid to the said Price one-half of the same, which one-half of the profits (*i. e.*, which may be made by a sale within five years) shall be in full of his services and expenses of every kind * * * and that no payment for services and expenses will be made by said Seymour except from the profits *made as aforesaid*."

(3.) The contract is not one which has merely one provision that the land shall be sold in five years, and another and distinct one that the party shall receive one-half the profits of the sales for his services. The language here is unequivocal, that the party is to have for his services only a share of the profits which *might* be made upon a sale of the land within five years from the date of the contract.

(4.) If, with every possible effort to sell the lands

during the five years, no sale could be made for a sum sufficient to repay the original purchase price and interest, was not the contract between the parties at an end? In such a contingency, we submit Price had no further claim upon Seymour.

2. This construction of the contract is reasonable and in accordance with the obvious intention of the parties, as indicated by its terms, the subject matter, and the circumstances.

(1.) Mr. Seymour was willing to and did invest his money in unproductive land, with which he was unacquainted, to be selected by Price, and took the chance of realizing the money, interest and expenses, out of the lands. The lands were expected to be, and were, in fact, free from taxes during the five years.

(2.) Price invested no money, he did not agree to bear any share of the loss, if Seymour never realized what he invested with interest. In consideration that Seymour would thus invest his money, Price was content to give his services in selecting the land for nothing, unless the lands could be sold for a profit within five years.

(3.) If the lands could not be sold at a profit within five years, Seymour was under no obliga-

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(3.) If the lands could not be sold at a profit within five years, Seymour was under no obliga-

tion to sell them afterwards. Not having been able to sell them for the original cost during the five years, Seymour could rightfully improve the lands, make them a homestead, and retain them forever for his own use.

(4.) Unless this is the true construction of the contract, Mr. Seymour was bound, after every effort during the five years to sell the lands at a profit or otherwise had failed, to retain them in an unproductive condition, pay the taxes upon them, leave his money locked up in them, and run the risk of never realizing from them the amount invested with interest. It is submitted that this would be an unreasonable construction of the contract.

IV. The parties and their representatives, for many years, practically construed the contract in accordance with the foregoing views.

1. Price lived until July, 1854, (compt. 16,) more than fourteen years after the expiration of the five years. No part of the land was sold during his life time. (15.)

2. Price never, during all this time, asserted any claim

under this contract. He never requested that the lands be sold, or in any way made claim to any interest in the lands, or their proceeds. During all this time he treated the contract as at an end, and the heirs of Mr. Seymour as the exclusive owners of the land and their proceeds. (See Comp't. Ans., 79, 80. Ans. 94, 97.)

3. In acting, during all this time, for the heirs of Mr. Seymour, in reference to these lands, Price treated them, throughout, as the exclusive owners, alone interested in their preservation and proceeds, and indicated, by his conduct, that he had no interest, and claimed none, under this contract.

(1.) The accounts, Exhibits C. and D., are copies of the original accounts, as kept by him. Comp't, fol. 14. Exhibit C., pp. 15 to 17. Ex. D., p. 19.

(2.) So far from the accounts indicating that Price claims any interest in the lands, they tend to prove the contrary. See heading of Acc't C. p. 15, small items for postage, interest, &c.

(3.) If he was not furnished funds by the heirs of Mr. Seymour, he allowed lands to be sold for taxes. See items in acc't C., under date of March, 1845.

(4.) His account was balanced before his decease. Acc't C., p. 17. Account D., p. 19.

4. High, the administrator of Price, individually, was, after the death of Price, employed, and acted as the agent of Mr. Seymour, as to these lands, and treated them and their proceeds as the exclusive property of Mr. Seymour's heirs, until this suit was commenced. Comp't, 19, 20. Ans., 99, 100; Ans. 81. High's Acc't, p. 17; do. p. 19, 20.)

5. It is after this lapse of time, and this course of conduct by Price and his representative, that a claim is first made in 1857, that Price is interested in the lands by virtue of the contract, and entitled to a part of their proceeds. It is submitted, that the claim is contrary to the express terms of the contract, and to their own practical construction of its intent and meaning.

V. Price could not, in his life-time, nor can his representatives, on the facts in this case, maintain a suit in equity, to have the lands and their proceeds administered as copartnership property. If he, or they, had any rights under this contract, the remedy was by an action at law.

1. This objection was taken in the court below, by demurrer to the bill, and afterwards by answer. Demurrer, fol. 64 to 68. Answer, folios 83, 84; 64 to 68.

2. The bill of complaint is based upon the theory that Price and Mr. Seymour were copartners, and that the property is copartnership property. (Complaint, 8 to 28.)

3. The decree proceeds upon this principle, and can not be upheld upon any other theory.

(1.) In the first decree it is declared that Price, "by virtue of the contract" above referred to, "was entitled, as an *equal copartner* in the ~~property,~~ profits to one equal half part of the profits made, or to be made, from the sale of the land and real estate" (fol. 122): that the lands were purchased by Price as an "investment on joint account of himself and said Seymour;" and that the sales made, and to be made, "are to be deemed and taken as made, and to be made on joint account" (fol. 123); and that as to the sales to be made, "this court will order and provide for the same on the coming in and confirmation of the Master's report." (124.)

(2.) By the final decree the Court proceeds to ad-

minister the property, in the language of the decree, "on just partnership principles." (204.)

The decree provides for the payment, out of the fund, of all the costs, expenses, &c. (212); "and the balance which shall remain, (of the funds then on hand,) being clear profits of the *partnership* land purchase and sale, up to the present time," be equally divided." (212.) At folio 213 the decree speaks of "closing and settling the partnership land accounts, so far as sales and collections have progressed."

The decree further declares, that certain of the lands which had been sold to one Davis, and purchased by John F. Seymour, on the foreclosure of a mortgage given by Davis, are "part and parcel of the partnership land, aforesaid," and that said John F. holds them in trust for the parties, "as partnership lands." (215.)

The Court appoints a receiver, and directs him as to the sale of the lands, and that the proceeds be paid into Court. (216 to 220.)

(3.) Thus, by the decree, Price and Mr. Seymour are adjudged to have been copartners, and the lands copartnership property. The heirs of Mr. Seymour are deprived of all authority and control over the lands; title is taken from them and vested in a receiver. The lands are, to all intents and purposes, decreed to be copartnership property, and as such, are subjected to the authority and control of the Court, and to all the expenses of being administered as copartnership property. (216 to 220.)

4. There is no allegation, and no evidence, that Mr. Seymour, in his life time, or the heirs since his death, have, in any way, violated their duty under the contract as to the lands. None that they acted improperly or improvidently in disposing of the portion of the land sold; or that there is any apprehension they will not dispose of the residue judiciously, and for the interest of all concerned. They reside where Mr. Seymour did when the contract was made. They are abundantly responsible, if the plaintiff is entitled, under the contract, to recover from them any amount.

5. The complaint should have been dismissed; and the decree is erroneous, and should be reversed.

(1.) Price and Mr. Seymour were never co-partners. The property was not, and is not, co-partnership property.

See I. and II. Points above.

(2.) If the representatives of Price have any interest in the profits, the remedy is by an action of law upon the contract. A Court of law, is the proper forum to construe the contract. A bill in equity to administer the lands, as co-partnership property, will not lie.

Hazard v. Hazard, 1 *Story's C. C. R.*, 371, 373, 376.

Stowe v. Robinson, 24 *Ill. R.* 532.

6. If this action and decree can be upheld, it is not perceived why a similar proceeding could not have been sustained against Mr. Seymour, during the five years, had he sold, or been about to sell, the lands at a profit. This, it is submitted, would have been in violation of the clear provisions of the contract the parties made, and their manifest intention.

VI. The suit cannot be maintained, or the decree upheld, on the idea that Mr. Seymour, or his representatives, were in fault for not selling the lands within the five years; or that his representatives were guilty of any neglect or misconduct as to the lands, or their proceeds, subsequently.

1. There is no allegation in the complaint, and no proof to sustain this theory. The contrary is clearly established. (Complaint, fols. 15 and 16. Answer, 75 to 77; 93; 94. Stipulation, fols. 112, 113.)

2. The decree does not proceed upon any such idea of law or fact; but entirely upon the theory that the lands are co-partnership property. (First decree, fol. 122, etc. Final decree, 204, 213, 216, etc.)

VII. Nor can the suit or decree be upheld upon any theory that this is a bill for the specific performance of the contract of May, 1835.

1. There is no complaint that the defendants and appellants decline or neglect to sell the lands according to the contract. The case concedes that the appellants have been always, and are now, ready and willing to sell the lands as rapidly as they can be judiciously sold.

2. The only ground of complaint is, that the appellants deny that, by the contract, they are bound to pay over to the representatives of Mr. Price a share of the proceeds of the land after the same are sold.

3. This is not an adequate cause for invoking the aid of a Court of Equity to compel a specific performance. Much less does it authorize the Court to take the property from the appellants, and place it in the hands of a receiver, to be sold by him.

4. The decree is not a decree for a specific performance of the contract. It does not require the heirs of Mr. Seymour to sell the lands, and pay over to the representatives of Price his portion of the proceeds. This is the most that the respondents claim Mr. Seymour *contracted* to do. But this his representatives are neither required nor permitted to do.

5. Whether specific performance of a contract will, in any case, be decreed, rests in the discretion of the Court.

2 *Story's Eq. Juris.*, § 742.

6. Upon settled principles, the case at bar is not one in which a Court of Equity will interpose.

(1.) There is no pretense that Price or his representatives have now, or ever had, any right to a conveyance of the land to either of them. By the contract made by the parties, Mr. Seymour and his representatives have the right to hold the lands, dispose of them, and receive the proceeds.

(2.) The remedy by an action at law is adequate. There is no suggestion that if, in such action, the plaintiff establishes his right to a portion of the profits, the defendants and appellants are not able, ready and willing to pay over the amount.

(3.) After so great a lapse of time, a suit for specific performance should not be entertained. The Court should leave the party to his action at law for damages, if there has been any neglect in not selling, or to recover his share of profits from sales.

Story's Eq. Juris., § 776.

Broshier v. Gratz, 6 *Wheaton* 528.

VIII. From the expiration of the five years mentioned in the contract, in May, 1840, until this suit was brought in 1857, no claim was made under or by virtue of this contract, by Price or his representatives. During all this time, the respondents treated the contract as at an end, and the property as belonging to them exclusively, with the acquiescence of Price and his representatives. It is submitted that any pretended rights of Price, or his representatives, were barred by lapse of time, when this suit was commenced.

See VI. Point by Judge Denio, pages 47, *&c.*

IX. We insist that the seventh, eighth and ninth points, presented in Judge Denio's brief, are well taken. See his brief, pages 50, &c.

X. Upon the facts of this case, the action is premature.

1. The representatives of Price are not entitled to have the lands disposed of by a receiver, as copartnership property.

See I. and II. Points, Supra.

2. The representatives of Mr. Seymour have, under the contract, the right to dispose of the lands, for the best price they can obtain for the same.

3. It is not alleged, or proved, that Mr. Seymour was, or that his representatives have been, guilty of any default or neglect in performing the contract on their part.

4. A very large portion of the land is still unsold. It was not, when this suit was brought, known, nor can it now be ascertained, what the amount of the profits are, or what they will be.

5. Neither Price or his representatives, could sustain an action, on the contract, for a share of the profits, until the lands had been all sold, and the profits could be ascertained. The cause of action, upon this contract, for profits, could not be split up, and an action brought every time a parcel of the land was disposed of, and some profits, apparently, realized. Price, or his representatives, had but one right of action, under the contract, for one-half the profits; and this does not accrue until the lands are all sold. Then his share of the profits can be ascertained.

Fish v. Folley, 6 *Hill's N. Y. R., p.* 54.
Bandernagle v. Cocks, 19 *Wendell*, 207, *and cases cited.*
Mandeville v. Welch, 5 *Wheaton*, 277, *per Story, J.*
2 *Cowen & Hill's Notes to Phillips' Ev., p.* 842. *Note No.* 582.
Colvin v. Van Patten, 15 *Wend.*, 557.

FRANCIS KERNAN,
Of Counsel for Appellants and Defendants.

SUPREME COURT

OF THE UNITED STATES.

L. C. P. FREER,

ADMINISTRATOR DE BONIS NON, OF JEREMIAH PIERCE, DECEASED,

Appellee,

vs.

HORATIO SEYMOUR

AND OTHERS, EXECUTORS, HEIRS AND DEVISEES OF HENRY SEYMOUR, DECEASED,

Appellants.

ARGUMENT OF H. F. MATHER,

Solicitor and Counsel for Appellee.

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1887.

IN THE

SUPREME COURT OF THE UNITED STATES,

ON APPEAL FROM THE

Circuit Court in and for the Northern District of Illinois.

L. C. P. FREER,
Admr. de bonis non of Jeremiah Price, deceased, Appellee,

ADS.

HORATIO SEYMOUR, AND OTHERS,
Exrs., heirs and devisees of Henry Seymour, deceased, Appellants.

In Chancery.

STATEMENT OF THE CASE.

The bill in this cause was filed February 3d, 1857, by John High, Jr., surviving administrator of Jeremiah Price, in the Cook County Court of Common Pleas, from which it was removed to the Circuit Court of the United States for the Northern District of Illinois, by the defendants, as citizens of the State of New York, under the privilege given them by act of Congress.

On the decease of Mr. High, in October, 1857, the name of the present complainant as administrator *de bonis non*, was ordered by the court to be substituted for the further prosecution of the cause.

The bill states a written contract to have been executed between Henry Seymour and Jeremiah Price, bearing date May 9, 1835, of which the following is a copy:

THIS AGREEMENT, made this 9th day of May, 1835, between Jeremiah Price, of Chicago, and Henry Seymour, of Utica, witnesseth, that the said Jeremiah covenants and agrees that he will forthwith devote his time and attention and exercise his best judgment in exploring and purchasing land to an amount not exceeding five thousand dollars, in the States of Illinois, Indiana and Ohio, and in the Territories of Michigan and Wisconsin, or in such of them as he may find most advantageous to the interest of said Henry, in whose name the contracts and conveyances shall be made and taken. It is understood that the purchases shall be made after full and careful searches and explorations for the most profitable investments on or near the sites, or expected sites, of towns or places of business, and in general in tracts of ground of moderate extent. And the said Henry covenants on his part to furnish five thousand dollars for the above contemplated purchases, and that the lands purchased as aforesaid shall be sold within five years from the present time, and out of the profits which may be made by such purchase and sale, after charging to the investment the taxes and other charges, if any, together with seven per cent. interest on the investment and the charges last mentioned, there shall be paid to the said Jeremiah one-half of the same, which one-half of the profits shall be in full of his services and expenses of every kind, in making the aforesaid explorations, searches, and in doing all such other things as may be requisite and proper in making the contemplated purchases. It is understood that the purchases shall be made during the present year, and that no payment for services or expenses will be made by said Henry, except from the profits made as aforesaid.

JEREMIAH PRICE,
HENRY SEYMOUR.

The agreement was recorded in the recorder's office of Cook County, Illinois, October 24, 1837, in Book V. of Deeds, p. 306, and a copy certified by the Recorder in due form, was admitted in evidence on the hearing—under a stipulation, dated Nov. 10th, 1864, and appearing in full in the record, and signed by the solicitors for the parties, "that it be read in evidence as if it were the original."

The bill states that Seymour advanced the sum of $5,000, named in the contract, in the State of New York, and Price immediately returned thence to Illinois, and proceeded to invest the same in lands, situated in the Counties of Cook, Will, Du Page and Grundy, in this State.

A schedule of all the lands, with description and location, is annexed, as an exhibit to the bill, showing 2,440 22–100 acres purchased, besides several town lots in Joliet village, in Will county; the titles having been taken in the name of Seymour, as required by the contract.

The bill states that from the purchase in 1835, until Price's death in 1854, (Seymour having also departed this life in 1837,) Price was agent for Seymour and for his estate, heirs, and devisees, in guarding and taking care of the lands, preventing trespasses and other injuries, paying taxes, etc., for which purpose the devisees remitted moneys, all of which accounts appear in schedules annexed to the bill as exhibits.

The bill states that though the land was intended to have been sold within five years, at first, yet neither Seymour (who was charged with the business of selling), nor Price, took any measures to sell in the lifetime of Seymour; nor his heirs after his decease; which neglect orator supposed attributable to the unfavorable state of the land market, and that neither party's interest would be promoted by an early sale;—avers, nevertheless, and charges orator's belief, that Price did, and suffered, nothing, at any time, to excuse or release Seymour or his heirs from the obligation to sell and divide the net profits equally, according to the written contract of May 9th, 1865.

The death of Price occurred on the 15th of July, 1854, and administration was granted on his estate to John High, jr., and Phœbe Meeker. Mrs. Meeker died in October, 1855.

The bill states the death of Henry Seymour, in August, 1837, leaving a last will and testament; leaving two sons and four daughters, who are made defendants, together with the executors named in the will and the husbands of the four daughters. By the will, the estate of Henry Seymour was directed to descend to and be distributed among his six children (defendants), as in case of intestacy, under the statutes of New York, where he resided.

The bill states that Mr. High acted as agent after Price's death, being retained by the heirs of Seymour to pay taxes, see to the lands and to make sales, and the accounts annexed to the bill show all of Price's accounts, both receipts and expenditures, and a continuation of the same accounts by Mr. High, including also his account of sales:—200 acres sold in all for $69,200: cash received by said High, $33,598.10: against which he charged $2,742.61 for his commissions on sales and other expenses incident to the lands, and from the excess, the sum of $12,366.67 was paid over by him to the heirs and devisees of Seymour, on account of the original investment, leaving, at the filing of the bill, in his hands, subject to payment and distribution, as the court should order, a balance of $18,488.82, and that so the whole amount of investment, and the cash advanced by devisees or heirs, for taxes, expenses, and interest thereon, has been restored to them by Mr. High, from proceeds of sales, though he admits there may *possibly* be a very small balance of interest yet unpaid, (and which, when ascertained, he admits first payable before an account of profits taken,) though most if not all the $18,488.82 belongs to the account of profits.

The bill insits that complainant, as administrator of Price, is entitled to an equal share in all the clear profits on sales, after paying the aforesaid small balance of interest, (if any), which is to be received and held by complainant as part and parcel of the personal estate of Price.

The bill avers a readiness at all times on the part of complainant, to agree upon and define the relative rights and interests of the two estates, in reference to sales of land and division of profits, for which purpose complainant had frequently made friendly overtures to defendants, but was met by a *refusal* to comply, and *a denial of the rights of Price's estate as claimed.* But, in consequence of the number of the parties interested, distance of their residence in the State of New York, death of the original parties, and the intervention of descent, marriage, and trusteeship, no arrangement could be effected, and from the claims set up by defendants to the whole proceeds, complainant had reason to fear, and did fear, that in case the residue of the lands should be sold and converted into money, and the same with the moneys on hand should be distributed among the six families in New York above named, beyond the jurisdiction of the courts of Illinois, where the lands lie, the interests of Price's estate would be so effectually used up, dissipated, placed out of reach, and lost, as to be hardly, if at all, worth pursuing or asserting, unless the defendants be *restrained by injunction.*

The bill therefore prays for an answer, not on oath; an *account* to be taken between the parties; that complainant, as administrator of Price, be decreed to be justly entitled to an equal half part of the clear proceeds of sales or net profits of the adventure, after payment of any balance of interest yet due. Also for an order and decree that the remaining lands be sold by a receiver or other person appointed by and under the direction of the court.

Also for an *injunction* and other relief—or such other as complainant might be entitled to in equity.

Horatio Seymour filed a separate answer. All the other defendants filed one answer on their part, jointly and severally.

The answers were unsworn, pursuant to a stipulation to that effect on file, and an order of the court entered on motion.

The *contents* of the answers will be best exhibited by arranging the same under the heads of the bill:

1st. Contract of May 9, 1835.

Admitted by all the defendants except Horatio Seymour; *he only* differs by insisting that the words "*for him*" be inserted between the word "purchased" and the words "as aforesaid," in the 20th line.

2d. *Purchase* by Price under said contract to $5,000, in full.

3d. Acres, 2,449 22-100 and Joliet lots.

Admitted by all the defendants.

4th. Price's agency, tax payment, &c.

Admitted in substance, but with modifications; say—that for first five years, no taxes due and no agency necessary, except to pay not more than $20; say—they consulted Price as to expediency of sales, and requested his general oversight, and that in law, Price should be considered as acting by some mutual understanding *and not as agent.*

5th. No *steps* taken to sell by H. Seymour nor by heirs—and the reason—and that Price never *waived, excused or released* his right to an ultimate sale and division of the property, &c.

Defendants ignore, say—Seymour would gladly have sold at any time if he could. But could not, so as to get cost and interest, inside of 5 years. Horatio Seymour says Price *waived* his right to a sale within 5 years, and that Price could not sell, and that Price *waived, excused and released* any sale by defendants under the contract; also, that Price claimed compensation as agent, and they are willing to allow it.

Defendants all claim that Price was only entitled to a share of such profits as could be made by selling within 5 years;—*admitted* by all of defendants except Horatio Seymour, that Price never did

any act *with intent to waive, excuse or release* defendants from sale, &c.

All defendants insist on the Statute of Limitations.

6th. Death of Price in 1854.

7th. Death of Mrs. Meeker.

8th. Death of H. Seymour, testate, &c., &c.

Admitted by all defendants.

9th. Mr. High's agency.

Admitted that High acted for the heirs after Price's death. Kept account of sales; sold to amount of cash received, $33,598.10. Horatio Seymour says that High's had no connection with Price's agency. The heirs made their own deeds, negotiating through High, who was to be fairly compensated.

10th. As to friendly applications on behalf of Price's estate, and refusals.

The joint and several answer admits a variety of applications, and all the defendants agree as to their willingness to pay Price a fair compensation for his services *and no more.*

Defendants all deny the jurisdiction of equity in this case. The joint and several answer admits the devisees stand in Henry Seymour's place and stead as to liability under contract to sell, if any such liability is shown.

Says that marriage only necessitated husbands being made parties.

Deny any descent to heirs from Henry Seymour.

All the defendants say executors not interested and *improperly* made parties. *Defendants say*, the *Heirs* are well known in the

State of New York, and the Courts in New York are open to us, without any receiver, and the heirs *are able to pay*. Horatio Seymour says he is ignorant of the accounts, and *denies* the original investment to have been repaid, or that $18,488.$\frac{82}{100}$ belongs to acct. of profits. Say they have paid other sums not stated in bill—denies that they have been *applied* to, and denies all the allegations of the bill that are not admitted by him.

General replications were filed by the complainant, taking issue on the several answers.

The following several stipulations stand in the place of proofs in the cause:

[No. 1.]

See full copy in Record, page

This contains the agreement signed by solicitor for the heirs and devisees of H. Seymour and other defendants in the court below, showing the correctness of all the accounts of Jeremiah Price, and also of John High, Jr., as in Exhibits "B" and "C," annexed to the original bill. Dated Feb. 4, 1860.

[No. 2.]

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This contains the agreement of solicitors of both parties, that the money received by Mr. Coventry, solicitor for defendants in Court below, $10,347.$\frac{69}{100}$ paid over to him by Mr. High's executor as the balance of moneys due to the land fund in this suit, be retained or kept back and not paid over to the Seymours, being held on to as a substitute for an injunction, the Circuit Court having decided to grant such injunction as prayed for. Dated Dec. 7, 1859.

[No. 3.]

See full copy in Record at page

This contains an agreement signed by solicitors for both parties, verifying the statement in the bill sworn to by Mr. High, that from proceeds of sale of the lands in question he had paid over and

distributed among the six children and heirs of H. Seymour, $12,-366.$\frac{87}{100}$, which is admitted on their part.

Complainant also admits in same that in May, 1840, the lands in question were unsaleable, and it is entirely uncertain how much they could have been sold for, or whether they would have brought enough to repay the original investment and interest. Dated June 21, 1864.

[No. 4.]

See copy of same in full at page in the Record attached to or accompanying the certified copy of contract of May 9, 1835.

This contains a stipulation signed by the solicitor for all the defendants below that the same be read in evidence and used on the hearing with the same force and effect as if it were the original agreement.

The cause was first argued on demurrer filed by the defendants to the bill of complaint in December, 1857. Hon. Alfred Conkling, of New York, associated with A. C. Coventry, Esq., for the defendants,—Mather & Taft for complainant.

The demurrer was overruled in this court, May 24, 1859.

The answer of John F. Seymour and others was filed June 27th, 1859.

That of Horatio Seymour on the 28th of Oct., 1859.

The cause was brought on for final argument, before the Hon. Thomas Drummond, District Judge for the Northern District of Illinois, at Chicago, on the 10th day of November, A. D. 1864.

Messrs. T. Hoyne and H. G. Miller, associated with Mr. Coventry, for the defendants.

Mather & Taft for the complainants.

As the same questions arose and were fully discussed before the Circuit Court, *first* on the demurrer to the bill, and *afterwards* on the final hearing, Nov. 10, 1864, it will not be necessary, now, to make any discrimination between them.

Not having seen the appellants' argument before this honorable court, and therefore not knowing whether any new points are to be made, we are under the necessity of confining our present points and argument to such questions as have already been presented in the court below.

At the same time, we shall endeavor to cover all the ground of debate in some form, so far as known or can be anticipated, and to present the appellee's case with such views as may be supposed sufficient to preclude any possibility of changing the decree of the District and Circuit Judge.

His Honor Mr. Justice Davis, though not present at the oral argument, afterwards read and considered maturely the full printed briefs and arguments of both parties and participated in rendering the final decree on the merits.

There are a few other facts to which we may as well call the attention of the court here, as it may aid the court in examining the details of the final decree.

We would, therefore, observe *first* in a general way, that in the present case there is no disagreement between the parties or counsel as to the facts in the case—or in the accounts of the several parties. The admissions in the answers, the stipulations between counsel, and the evidence on the various matters of account contained in Mr. Coventry's deposition before the master, are sufficient fully to remove out of the way any matter of possible doubt as to the facts in the case and the accounts.

On these, all and singular, there is perfect concord; and nothing is left open but the question of law and equity. What are the rights of the parties on those facts all admitted and proved? Such

is the report of the master, and no exception was taken to the report.

The fact is: On the part of the appellee, his counsel have admitted and allowed before the master, as the report shows, every account and claim which the heirs of Henry Seymour presented on his and their part, including 22 years' interest at 7 per cent. on the original advance of $5,000 to make the investment, and with interest at like rate all the cash advances made by the heirs to pay taxes, &c., from the time of the advance to May 9, 1857, besides which, the appellee, at the request of the opposite counsel, have consented to waive all claim for interest on one-half the very large sum—over $25,000—which has been accumulating in the hands of appellant's solicitor, acting as their agent, most of it ever since the year 1857.

And the appellants, with an equitable spirit deserving of praise (as it abridged the labor of proofs,) have made no objection to the accounts presented on the part of the appellee, besides disclosing receipt on their part of $6,715.19, moneys collected from land sales, without the intervention of agents at Chicago, and which the appellee would not otherwise have known.

To be a little more particular with regard to the principal points in the final decree: Thereby the court adjudicate and find,

1st. That all of Jeremiah Price's accounts are fully settled and balanced down to the time of his decease, on the 15th of July, 1854.

This is proved by admissions contained in the answers in part; and as to the residue, by stipulations signed by solicitors for both parties, dated Feb. 4, 1860, referring to exhibits "B" and "C" attached to the original bill, and covering as well the accounts of Mr. High, mentioned in the next finding.

2d. That all the accounts of John High, Jr., as administrator of Price, (survivor of Mrs. Meeker,) and agent of Seymour's heirs and devisees, and complainant in the original bill in this cause, have

State of New York, and the Courts in New York are open to us, without any receiver, and the heirs *are able to pay*. Horatio Seymour says he is ignorant of the accounts, and *denies* the original investment to have been repaid, or that $18,488.$\frac{87}{100}$ belongs to acct. of profits. Say they have paid other sums not stated in bill—denies that they have been *applied* to, and denies all the allegations of the bill that are not admitted by him.

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Not having seen the appellants' argument before this honorable court, and therefore not knowing whether any new points are to be made, we are under the necessity of confining our present points and argument to such questions as have already been presented in the court below.

At the same time, we shall endeavor to cover all the ground of debate in some form, so far as known or can be anticipated, and to present the appellee's case with such views as may be supposed sufficient to preclude any possibility of changing the decree of the District and Circuit Judge.

His Honor Mr. Justice Davis, though not present at the oral argument, afterwards read and considered maturely the full printed briefs and arguments of both parties and participated in rendering the final decree on the merits.

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On these, all and singular, there is perfect concord; and nothing is left open but the question of law and equity. What are the rights of the parties on those facts all admitted and proved? Such

is the report of the master, and no exception was taken to the report.

The fact is: On the part of the appellee, his counsel have admitted and allowed before the master, as the report shows, every account and claim which the heirs of Henry Seymour presented on his and their part, including 22 years' interest at 7 per cent. on the original advance of $5,000 to make the investment, and with interest at like rate all the cash advances made by the heirs to pay taxes, &c., from the time of the advance to May 9, 1857, besides which, the appellee, at the request of the opposite counsel, have consented to waive all claim for interest on one-half the very large sum—over $25,000—which has been accumulating in the hands of appellant's solicitor, acting as their agent, most of it ever since the year 1857.

And the appellants, with an equitable spirit deserving of praise (as it abridged the labor of proofs,) have made no objection to the accounts presented on the part of the appellee, besides disclosing receipt on their part of $6,715.19, moneys collected from land sales, without the intervention of agents at Chicago, and which the appellee would not otherwise have known.

To be a little more particular with regard to the principal points in the final decree: Thereby the court adjudicate and find,

1st. That all of Jeremiah Price's accounts are fully settled and balanced down to the time of his decease, on the 15th of July, 1854.

This is proved by admissions contained in the answers in part; and as to the residue, by stipulations signed by solicitors for both parties, dated Feb. 4, 1860, referring to exhibits "B" and "C" attached to the original bill, and covering as well the accounts of Mr. High, mentioned in the next finding.

2d. That all the accounts of John High, Jr., as administrator of Price, (survivor of Mrs. Meeker,) and agent of Seymour's heirs and devisees, and complainant in the original bill in this cause, have

also been and are fully settled and balanced, showing certain payments made by him to the heirs and devisees of Henry Seymour from proceeds of sale; the last of which payments, however, was made after the bill was filed. It is here to be noticed by way of explanation, that the bill admits a balance of moneys to be remaining in the hands of Mr. High, when the bill was filed, amounting to $18,488.82. The court will see, however, by looking to the deposition of A. C. Coventry, Esq., solicitor for Seymour's heirs and their agent, that he settled this part of the account with E. Blackman, executor of Mr. High's estate, and received from said executor the sum of $10,347.69, as the balance due from Mr. High's estate; his intermediate account sufficing in the mean time to cancel or make up the difference between that sum and the previous balance of $18,488.82. That account intermediate is stated and attached to the master's report, marked "Exhibit C." Mr. Coventry also testifies to the correctness of Mr. High's account in this respect.

The stipulation referred to in the first heading above, dated Feb. 4 1860, covers all the residue of Mr. High's accounts.

At this point all the moneys and accounts, on the decease of Mr. High, in October, 1857, pass into the hands of Mr. Coventry, solicitor for the Seymour heirs, and their agent at Chicago, as successor to Mr. High.

3d adjudication and finding of the court.

That on the 9th day of May, 1857, which is the date of Mr. High's last remittance to the heirs of Henry Seymour, they had received back from the proceeds of sale of lands made by Mr. High, $20,892.67, which sum was sufficient at that time to return the whole $5,000 originally advanced by Henry Seymour, with 22 years' interest at 7 per cent., together with all the money advanced by the heirs to pay taxes and expenses, with interest to the same date from the time of advance, *besides* leaving in their hands a surplus belonging to the account of clear profit, to the amount of $4,755.10.

This is all proved and admitted, as stated in the report.

4th adjudication.

States the agreement of both parties, as reported by the master, to waive all claim for interest, on either side, after 9th May, 1857.

5th adjudication.

This adopts the fact stated by Mr. Coventry, that the heirs of Henry Seymour had received, at Utica, from proceeds of land sales, the sum of $6,715.19, which did not pass through the hands of any agent, but whereof they rendered an account to the master, which is made an Exhibit "E" with his report.

6th adjudication.

States the account of A. C. Coventry, as agent, solicitor, counsel and receiver for the heirs of Henry Seymour, deceased, successor to Mr. High, as sworn to by Mr. Coventry.

He received from collections made on sales made by Mr. High, which he followed up, the sum of.....			$28,977 79
Add thereto the bal. found in the 3d adjudication above,			4,755 10
do do do 5th do do			6,715 19
This gives an aggregate of.....			$40,448 08
Subject to the following deductions:			
Mr. Coventry's acc't of taxes paid, &c.— am't—see his testimony,.....	$7,878 76		
Acc't rendered by H. Seymour,.....	3,816 75		
do Mr. Coventry's Commissions	1,448 86		13,144 37
Making a surplus over and above full return of original capital, and over and above expenses and interest, in the hands of Messrs. Seymours and their agent, Mr. Coventry, of.....			$27,303 71

7th adjudication.

That $2,000 of the last balance or surplus is justly chargeable to the estate of Jeremiah Price.

8th adjudication.

That the further sum of $500 is also chargeable to the estate of Jeremiah Price, which is not included in the above sum or surplus of $27,303.71, having been paid by Mr. High to his solicitors, and entered to his credit in the accounts intermediate the filing of the bill and his decease. The court therefore order, that in the division of the above surplus now on hand between the respective parties, after due credits being given for the last named two several sums of $2,000 and $500, be first paid all costs taxed in this cause, and the residue be equally divided, one-half to complainant, as representative of Price's estate, and one-half to the heirs of Henry Seymour, deceased; which, when done, will close and settle the partnership land accounts so far as sales and collections have progressed.

The deficiencies due on the two foreclosure bills against John W. Davis, being the only debts due the land concern remaining uncollected.

9th adjudication.

This shows how much land has been sold and parted with wholly from the first investment, as well as the portions originally sold, which have been restored by foreclosure, adjudging that the purchases by John F. Seymour, one of the heirs, had the effect in law and equity only to return the title which he so purchased to the same trust and land fund to which they belonged originally.

Orders a sale of the remaining lands (including the last specified) at private sale, by A. C. Coventry, as receiver, so appointed by consent and stipulation of both parties on file, the terms of sale all agreed upon.

The foreclosure deficiencies to be collected by receiver, and divided equally between the several parties, as well as all the proceeds of sales, which are to be brought into court for the purpose of proper distribution.

The decree closes with a full description of the lands and lots to be sold.

IN THE

SUPREME COURT OF THE UNITED STATES,

ON APPEAL FROM THE

Circuit Court in and for the Northern District of Illinois.

L. C. P. FREER,
Admr. de bonis non of Jeremiah Price, deceased, Appellee.

ADS.

HORATIO SEYMOUR AND OTHERS,
Exrs., heirs and devisees of Henry Seymour, deceased, Appellants.

In Chancery.

MAY IT PLEASE THE COURT:

The principal points to which we shall call the attention of your Honors in the discussion of the case, may be stated as follows:

POINT FIRST.

The written contract between Price and Seymour, bearing date May 9th, 1835, constituted the relation of copartnership between themselves, in the purchase and sale of the lands in controversy; and as a means of doing justice between the partners or their personal representatives, courts of equity compel sales to be made in such cases in conformity to the agreement.———Whether the relation of the parties to each other, under this contract, be denominated technically a partnership or not, is, however, perfectly immaterial; inasmuch as the contract is, in any view of it, of a nature entitling

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That the further sum of $500 is also chargeable to the estate of Jeremiah Price, which is not included in the above sum or surplus of $27,303.71, having been paid by Mr. High to his solicitors, and entered to his credit in the accounts intermediate the filing of the bill and his decease. The court therefore order, that in the division of the above surplus now on hand between the respective parties after due credits being given for the last named two several sums of $2,000 and $500, be first paid all costs taxed in this cause, and the residue be equally divided, one-half to complainant, as representative of Price's estate, and one-half to the heirs of Henry Seymour, deceased; which, when done, will close and settle the partnership land accounts so far as sales and collections have progressed.

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either party to a decree for *specific performance*. The bill is equally well adapted to either view; indeed, specific performance, in all such cases proceeds essentially on grounds of partnership, or, at least, on grounds analagous thereto.

POINT SECOND.

The two parcels of land purchased by John F. Seymour, on foreclosure, were not by such purchase detached from the original trust, by which the heirs held them; but were merely restored to the original trust. He still holds them as trustee for all the parties.

POINT THIRD.

Courts of Chancery have exclusive jurisdiction in the closing up and settlement of partnership business and accounts.

POINT FOURTH.

The statute of limitations cannot be set up in bar of suit, in cases of partnership—or trusts.

POINT FIFTH.

The defence of *laches*, *staleness* or *neglect*, cannot be set up in this case, as against Price or his administrator.

POINT SIXTH.

Time was not material—nor, in any sense, the essence of the contract between Price and Seymour.

POINT FIRST.

ON THE SUBJECT OF PARTNERSHIP.

This head will also include cases on *specific performance;* and where the cases cited involve other points necessary to be considered in this case, the same will be discussed and applied wherever they first occur.

1 *Pennsyl. R.* 147; *Brady vs. Cullom.*

In this case, Gibson, C. J., says: "There may be *a partnership* to trade in land, and it may, as in any other case, be limited to purchasing only.

21 *Maine*, 421, 422. *Dudley vs. Littlefield.*

Whitman, C. J., says: "We do not see why there may not be a copartnership in buying and selling land, as well as any other vendible property.

The rules of transferring land may be different from those respecting personal property, but that can make no difference in the result *as to profit and loss.*"

3 *Sumner's R.*, 435. *Smith vs. Burnham.*

In this case, Judge Story, in an elaborate opinion, admits and declares, at page 439, that where the proofs of such co-partnership arrangement as to real estate purchases is satisfactory as to its *nature and extent, and the proportions of the parties*, a court of equity will lend its aid to enforce it. The sole ground of defense on which Judge Story dismissed the bill in that case was, that the co-partnership contract was not in writing, so as to take the case out of the purview of the Statute of Frauds. But, at page 460, the judge states the equitable doctrines applicable to such cases, with great clearness and force, and we think in a manner which defines the mutual rights of Price and Seymour, under their written contract.

"Suppose," says the judge, "the defendant should die after any particular purchase and before the sale; would it not be clear that the trust, if it had any legal existence, would attach in favor of the plaintiff as to his moiety, just as much against *the heirs* of the defendant, or persons purchasing under them with notice, as against the defendant himself? *Certainly it would.*"

In Price's case, the very supposition on which the above doctrine is stated, has actually occurred in the death of Seymour, one of the contracting parties, before sale, and the condition prece-

dent under which the trust is spoken of as *certainly existing*, referring solely to the obstacle arising from the statute of frauds, that condition not existing in Price's case, the equitable doctrine announced applies to our case with the fullest force. What follows, however, makes the same more clear:

"It has been ingeniously argued that the interest of the plaintiff is in a moiety of the profits or proceeds of the sale, and not in the land itself; and that, therefore, at least when the land has been sold by the defendant, the agreement attaches to a moiety of the proceeds. But the agreement, if good at all, *attaches also to the land* at the time of the purchase, and it is then an agreement for *an interest by way of trust* in the land—a sort of springing trust; and it is in virtue of this trust estate, and of this only, that any right can attach to the moiety of the proceeds. The right to follow the proceeds, is a right which, if it exists at all, *flows from the interest in the lands, and the trust created in favor of the plaintiff.* It is not collateral, *but direct.* Indeed, the bill puts the agreement as one of co-partnership, for 'purchasing and selling lands' by means of a capital furnished by the partners, the profits and losses to be equally shared by them."

This case seems to us to decide, in the clearest manner, that Price, on the ground of a partnership in the purchase and sale of lands in a given adventure, *constituted by a written agreement* defining exactly the nature and extent of their rights and the proportions of the parties in profit and loss, is entitled to an equitable interest in the lands, in the nature of a springing trust; that the lands descended to Seymour's heirs subject to the same trust; and that the case is one in which a court of equity is bound to grant relief by enforcing a sale pursuant to the agreement.

4 *McLean's Rep.*, 16. *Olcott vs. Wing.*

This is a case of partnership in a real estate adventure, parallel in almost all its features with Price and Seymour's. Complainant and defendant entered into agreement to purchase real estate for speculation. Complainant to advance the money, defendant to

make the purchases, which he did. They agreed that a sale should be had in five years, and profits divided equally, after refunding to complainant cash advances and interest. Title first to defendant, he after conveyed to complainant. *Court say* (McLean, Justice): "It was proper to ask the aid of a Court of Chancery to adjust "this matter. The only regular and safe course for complainant "was to file a bill, and ask for a sale under the direction of the "Court. (Complainant was to furnish the capital and defendant to "perform the labor and participate equally in the profits.) *No diffi-* "*culty is perceived. Decree* for sale by *master—profit and loss* to "be equalized."

22d *Howard's Rep.*, 330. *Ward vs. Thompson.*

This is a case triumphantly establishing the principles for which we contend. "Where the parties joined together to carry on an adventure in trade for their mutual benefit, one contributing a vessel, and the other his skill, labor, experience, &c., and *there was to be a communion of profits*, on a fixed ratio; it was a contract over which a court af admiralty had no jurisdiction."

The court say, by Mr. Justice Grier, at page 333:

"A contract *of partnership* is where parties join together their money, goods, labor or skill, for the purpose of trade or gain, and where there is *a community of profit.*

"*Wards* contributed the steamboat to be put in a line for freight and passengers, which has also a contract for carrying the mail. Thompson contributes the good will of an established line, together with his care, skill and experience. He is to have the general management of the business and selection of the officers and crew. But the clerk, or receiving and disbursing agent, is to be appointed by the Wards, and to be under their control.

"The receipts are to be applied:

1. To pay expenses.

2. Insurance.

3. $6,000 to Ward.

4. $300 to Thompson.

5. The balance of profits to be equally divided.

Here we have *everything necessary to constitute a partnership.*

1st. The parties have joined together to carry on a certain adventure for their mutual profit. *One* contributing the vessel, *the other* his skill, labor and experience.

2d. There is a *communion of profits* on a fixed ratio.

Observe, also, in this case, by the very terms of the written contract, *Thompson* was to be paid his $300 per year out of the earnings of the boat, expressly "*for his services as agent for said steamer.*"

Still, by the decision of the *Supreme Court* of the United States, he was none the less entitled to be considered and treated *as a partner* in the adventure.

In applying these principles to the case of Price and Seymour, we should remember, as hereafter demonstrated, that land bought with Seymour's money on speculation, with profits to be divided among the two (no matter in whom the title is vested legally), is regarded as personal property, so treated by courts of equity, and a decree for the sale of the same proceeds on the double equity.

1st. Of a sale to close up the affairs of *a partnership.*

2d. A sale to enforce *mutual rights* of the *parties* to the contract on the ground of *specific performance.*

The court will also observe that in cases where a partnership in the profits is established, in such case the partner whose rights are refused him, always has a *right in equity* to claim a sale by way of specific performance as the only means of ascertaining and seizing his share of profits.

27 Ills. Rep. 365, *Robbins vs. Laswell.*

This case is one parallel to Price and Seymour's in almost every feature.

The head note is this:

"When, by agreement, persons have a joint interest of the same nature in a particular *adventure*, *they are*, *as between themselves*, *partners*, although some contribute money alone and others labor alone.

"If parties agree *to share profits*, they are *partners* as to such profits.

"A written agreement as to dividing profits may be extended *tacitly* by the *mutual understanding* of the parties, or by *their conduct* in relation to it."

The contract, in this case, was written. *Robbins* advanced the money capital, $254; Laswell was to *buy feed*, *&c.*, *young cattle*, heifers, steers, yearlings, &c., and to *sell them in one year from date* (March 1, 1853). The stock purchased *all to belong* to *Robbins* till his capital was returned, and the profits to be divided equally. The evidence shows the actual transactions ran over the one year's time, and expanded in amount from *hundreds* to *thousands* of dollars. Robbins filed the bill.

There is scarcely a feature of *the facts* in this case, and *the law of it*, as expounded by Judge Breese, which has not its counterpart in Price and Seymour's case.

The idea was started by the defendants, that the *continued operations* of the parties beyond *the time* specified in the agreement, and *beyond its amount*, could not be under the contract, for want of *direct proof of its continuance.*

See *what* and *how* Judge Breese answers this—by saying—at page 369, that "the *facts* and *circumstances* or *conduct* of the *parties* speaks LOUDER than words."

Again he says:

"*As between themselves*, we think there *can be no doubt* of a partnership.

"It seems to be *well settled*, that when by agreement persons have a joint interest of the same nature in a particular adventure, *they are partners inter se*, although some may contribute *money* and others *labor*."

He cites, also, the same cases which we laid stress on above, viz:

4 *Barn. & Cress.*
Story on Part. Sec. 15.
16 *Johns. Rep.* 34, *Dobbs vs. Halsey.*

Then, again, he discusses, on p. 370, the question, "*was the* agreement *extended or enlarged?* so as to embrace the stock purchased subsequently up to the fall of 1855?" (contract dated 1 March, 1853, and, of course, the year expired 1 March, 1854.)

He argues that it was extended—"Because," he says, "It is not shown by *any act of the parties*, or by any *declaration* of the other party, that they had terminated, or desired to put an end to the written agreement;" and he asks, "*To what else* but the written agreement can the *acts and conduct* of the parties be referred? no new or different agreement being shown, and no extension in writing being necessary."

In coming to a conclusion, the court say, p. 373.

"This court having jurisdiction, (a partnership existing as to the profits,) will hold the case, and so adjudicate upon it, as to do complete justice between the parties."

Hence the court decreed—

1. That Robbins *have and receive one equal half of the profits.*

2. That a master, on a reference, state all the accounts *inter partes*, giving each party half the clear profits, including *that part* of the property purchased which *defendant* had under his control and *refused to deliver over.*

The decree of Circuit Court *reversed*, and the above, a new *decree*, substituted in its place, and cause remanded to Circuit to execute the above decree.

This cause, and the court's opinion on the law of partnership involved, absolutely and wholly *annihilates* the view our opponents take of Price & Seymour's contract.

18 *Wend.* 183. *Champion* vs. *Bostwick.*

Walworth, Ch., says: "It is not necessary, to constitute a partnership, that there should be any property constituting the capital stock which shall be jointly owned by the partners.

"It is sufficient to constitute a partnership if the parties agree to have a joint interest in and *to share the profits and losses* arising from the *use of property, or skill*, either separately or combined."

6 *Calif. R.* 574. *Garr* vs. *Redman.*

In this case the court held that "a bill for an account is the proper remedy for a settlement of the proceeds of a joint adventure; where, in consideration of outfit and advances made by the plaintiff, the defendant agreed to account for and pay over a proportion of the proceeds of his labor and speculations of every kind for a certain period of time, although the parties may not have been technically partners."

Court say: The bill was properly filed for an *account*, whether the parties were technically partners or not. The contract made an account a necessity to determine their respective rights.

9 *Calif. R.* 616, *Gray vs. Palmer.*

In this case, the court declare (p. 635) what decree in cases of sale of partnership property *is final*, and when it is *only interlocutory, turning* on the question whether, in case of a sale ordered, the accounts of the parties are ascertained and liquidated and ordered paid out of the proceeds, before the decree for sale; in such case it is *final.* But if the accounts are yet *open and unadjusted* when the order for sale is made, such order or decree for sale is *interlocutory only.*

The court also say, (p. 637,) conceding the allegations of complainant to be true, (i. e. alleging *partnership* in real estate and all other business in California,) the surviving *partners* were entitled to the possession and management of the partnership effects, and the only interest the heirs of the deceased partner could have in the partnership assets was the net interest of their ancestor after the partnership debts were all paid.

ON THE SUBJECT OF NECESSARY PARTIES TO SUCH BILLS THE COURT ALSO SAY, p. 637: It was *necessary* to file the bills, and to make *the administrator* (of the deceased partner) *the widow and the infants*, (*heirs of deceased partner*,) *parties*, for the reason *that the real estate stood upon the record in the name of the deceased*, and the court add, that the bill was imperatively necessary in order to REBUT *the prima facie ownership of the heirs* of deceased partner, who held the legal title in his own name, and to legally vest the property in the partnership. For, by the theory of our system, the estate of the ancestor *vests in the heir*, subject to the lien of administrator thereon for payment of debts, if that should be necessary.

Another reason might perhaps be given in Price and Seymour's case, thus: The executors of Seymour are necessary parties, because inasmuch as the case involves the necessity of *an account* to be stated and taken between Price's and the Seymour estate, that accounting touches and concerns material interests appertaining to the *duties*, *rights* and *liabilities* of the *executors*, as much so, indeed, as of the *heirs*.

The court also decide, at page 638, that *community of profits only* is sufficient to create a partnership.

Also, p. 639, court say: There can be no doubt at this day, that a partnership may exist in the purchase and sale of lands. *Story on P. Sec.* 83, *Collyer, Sec.* 51, note. But the partners must, by the contract, be jointly concerned in the future sale. *3d Kent Com. pp.* 25, 26.

And again at p. 639: This being the true character of partnership real estate, the surviving partner has *an equitable lien upon it for the balance that may be due him from the firm*, and for the same reason *the heirs* of deceased partner have only an interest in the *net partnership property* after all just claims paid out.

Collyer on Partnership, Sec. 16.

"Where, by agreement, persons have a joint interest of the same nature *in a particular adventure*, they are *partners inter se*, although *one* may contribute *money* and *others labor*."

"Such a partnership may well exist, (says Abbot, C. J. in *Read vs. Hollingshead*, 4 B. & Creswell, 868,) although the whole price is, in the first instance, advanced by one party, the other contributing his *time* and *skill*, &c., *in selection and purchase of the commodities*."

Idem, Sec. 17.

"Frequently one is sole owner of goods and the other sells or manages.

"*Here, if they share the profits*, they are *partners in the profits*, although one only contributed the goods and the other *only trouble*."

Idem, Sec. 18.

"A man may *by agreement not share loss*, and yet if he share *profits*, he is a partner."

DEFINITION OF PARTNERSHIP.

Collyer on P., Sec. 3.

"Partnership, as between the parties themselves, is a voluntary contract between two or more persons for joining together their *money, goods, labor* and *skill*, or *any* or *all* of them, under an understanding that there shall be *a communion of profits* between them, and for the purpose of carrying on a legal trade, business or adventure."

Idem, Sec. 5.

"It (partnership) enables any one of them to file a bill in equity against the others for (1) a dissolution of the partnership, (2) a sale of the partnership effects, (3) a division of the proceeds among the partners."

CONSEQUENCES OF DISSOLUTION.

Collyer, Sec. 121.

"The effect of *a dissolution* as *inter sese* is to put an end to all *transactions inter sese* as partners, *except* for the purpose of taking *a general account* and *winding up the concern.*

4 *Sanford's N. Y. R.* 311. *Ogden vs. Astor.*

"The fiduciary relation of Trustees to *cestuy que* trust subsists between surviving partners and the representatives of the deceased."

3 *Kent's Com., p.* 65, (57 *marg.*)

"A community of interest still exists between the survivor and the representatives of the deceased partner, and those representatives have a right to insist on the application of the joint property to the payment of the joint debts and the due distribution of the surplus."

And the Chancellor continues on p. 66, (*m.* 57,) *to say:*

"*If the survivor does not account in a reasonable time*, a court of Chancery will grant an injunction to restrain him from acting, *appoint a receiver*, and direct the accounts to be taken."

43 *Maine R.* 564, *Bearce vs. Washburne and others.*

Where one person advances funds and another furnishes his personal services and skill in carrying on a trade or operation, and is to share in the profits, it amounts to a partnership. See, also, *Story on P., Sec.* 2; 3 *Kent's Com.*, 24.

Dob vs. Halsey, 16 *John. R.*, 34.

After a dissolution, the copartnership *is regarded in law as continuing* for the *settlement of its affairs*, and each partner retains for

that purpose his former powers, unless a different agreement is made. For which see 34 *Maine*, 56, *Garnett vs. Cunningham.*

Story on P., Sec. 324, 328.

Equity will not be ousted of its jurisdiction because the Courts of Law have adopted equitable principles.

7 *Foster's N. H. R.*, 503, Wells *vs.* Peirce.
2 *Paige*, 497, Sailly *vs.* Elmore.
3 *Conn.*, 501, Minturn *vs.* Farmers' Loan.

1 *Gilm. Rep.* 373, Smith *vs.* Ramsey, *et al.*

In 1810, Smith & Crawford were partners in business and took in Bolgiano, who furnished one-half capital and had one-half the profits—S. & C. each one-quarter.

In 1821, or soon after, land to value of $1,600, 50 quarter sections, were conveyed to Crawford by a debtor of the firm, in payment of a Co. debt.

In 1832, partners being about settling up, Crawford conveyed one-half the land to Bolgiano, and died seized of the other one-half, leaving Ramsey, a defendant, his sole heir.

Smith filed his bill, praying for a conveyance to him of one-half the lands retained by Crawford, i. e., one-quarter of the whole.

The Court per Caton, J., (376).

"When Crawford received the legal title of this land, he became a *trustee* for the firm, each member having an interest in it, same as in the debt for payment of which it was received.

(377)

"The weight of authority would seem to indicate that, in a court of equity, at least, property thus situated would be treated as personalty in closing up its affairs, and as partnership assets, and applicable to partnership debts, in preference to individual debts of the members of the firm, and that the *widow* would not be dowable as against partnership creditors.

The deed to Bolgiano of one-half, however, severed the partnership interest or ownership.

And the one half retained by Crawford, he became *a trustee* for one-half thereof for the complainant Smith.

On the death of Crawford, *his heir*, to whom the legal *title descended*, became a trustee for the complainant, instead of his ancestor.

The bill was filed to enforce the execution of this trust.

The bill undoubtedly shows equity, and lapse of time is not sufficient of itself to bar the equity.

This case shows (contrary to the pretenses set up in *the answer*) that the land *descended* from Seymour on his death to *his heirs*, who thereupon became *trustees for Price*, in respect to his one-half ownership, and as partner in the profits. *Also*, that no objection in such cases arises from lapse of time authorizing the charge of *staleness*, and by parity of reason the Statute of Limitations is equally inapplicable.

29 *Ill. R.* 323, Nicholl *vs.* Ogden.

"Real estate held in trust by one of several persons, partners in a speculation, is *personalty*."

At page 378, *Caton, C. J., says:*

"During that time (i. e. while held by Butler, trustee,) the right of the *cestuy que trust* was a personal right. It was personal property and would not descend to their heirs. They were partners in a speculating enterprise, and this property constituted their stock in trade, and in such case there is no dispute that the character of *personalty* is stamped upon the property for the purpose of fixing the character of the interests of the several partners, although it was in truth real estate."

White's Leading Cases in Equity, or 34 *Vol. Law Library, p.* 555, *Case of* Fletcher *vs.* Ashburner, *taken from* 1 *Brown's Chancery Cases.*

"Upon the same principle as money agreed or directed to be laid out in land, will be considered in equity as land, so land agreed or directed to be sold, will be considered as money, and as such will pass under a general residuary bequest of personal estate, and in case of intestacy will go *to the personal representatives.*"

1 *P. Williams*, 710, *Frederick vs. Frederick.*

"When one, for a valuable consideration, agrees to do a thing, such executory contract is to be taken as done; and that the man who made the agreement shall not be in a better case than if he had fairly and honestly performed what he had agreed to do." So says Lord Macclesfield, Lord Chancellor of England.

24 *Howard R.* 536. *Berthold vs. Goldsmith.*

This case was cited and relied upon by defendant's counsel to show that there was no partnership between Price and Seymour; we think it shows the contrary position, which we hold.

At page 541 (foot) court say: "Wherever there is a community of interest in capital stock, and also a community of interest in profit and loss, then it is a clear case of actual partnership, both *inter sese* and of course as to third persons;" *but proceeds to say*, "all the decided cases agree that it is SELDOM OR NEVER ESSENTIAL that both these ingredients should concur in order to establish that relation."

"A community of interest in the property without regard to profits, will almost necessarily lead to the conclusion that partnership existed, and under some circumstances that conclusion will follow, although sale of the property for joint interest *may not* be contemplated.

"On the other hand, it is equally clear that there may be *such a community of interest in the profits* without regard to loss, and

without any community of interest whatever *in the property* as will establish that relation."

We say there was a most perfect community of interest between Price and Seymour *in profits as profits.* Price fulfilled all on his part; *Seymour only is in default, i. e.*, by refusing to Mr. High to sell, so as to allow communion of profits. At page 544 court say--*But he* "did not rely on the profits for his compensation, for unless half the profits exceeded $1,800 a year, he was neither to be benefited nor injured."

At page 542, court say also: "Actual participation in the profits as principal, we think, creates a partnership as between the parties and third persons, *whatever may be their intentions* in that behalf, and notwithstanding the dormant partner was not expected to participate in the loss beyond the amount of the profits."

The same doctrine, viz., that community of profits alone may constitute a partnership, even though the other party is to own all the stock, is stated by Story on Part., sec. 27, page 41:

"For if *the whole capital stock* belongs exclusively to one partner, *yet, if there is a community of profits and loss in the enterprise or adventure*, they will be partners in the profits.

In the case 4th *McLean's Reports, Olcott vs. Wing* cited above, the court held Wing liable for half the losses on the sole ground of community of profits.

The court will see by examining the record in this case, that the liability of Wing as a partner, so far as participation in losses goes, is predicated on the expression in Olcott's letter, "*you to make no claim for services*," which is deemed equivalent to putting that in as capital to be sunk or not paid for, unless, by torturing words, you call contingent profits a remuneration therefor.

Precisely so was it with Price; he was subjected by express contract to a liability to lose all he put in, in exact accordance with

the established principles of the civil law, and *this liability to loss*, in connection with *an expressly agreed participation in profits* constitutes an infallible criterion of partnership.

We hazard nothing, we think, in affirming that no reported case can be found in England, or in the United States, where, upon a concurrence of those circumstances, it was decided that no partnership existed. It is also to be remembered that the opinion of Judge Story, as above cited from 3*d Sumner's Rep.*, goes further, and shows that where the partnership in profits exists on speculative land purchases, in all such cases the partners have each an equitable interest in the lands, notwithstanding the legal title may be in *one* only of the partners.

16 *Johns. Rep.* 44. *Dobb vs. Halsey.*

"Where *one furnishes funds* and the other *does services*, on condition of community of profits. they are partners *inter sese*, and as to third person, both—and community of losses is necessarily involved."

In this case Moore covenanted in writing that he would superintend the saw pits and lumber yard of the plaintiff Dobbs for one year, *in consideration of his receiving one-third of the net profits.*"

The question arose whether Moore was a partner with the plaintiffs in consequence of his agreement for one-third of the profits *as a compensation for his services* in superintending, while the other party owned the lumber and the yard.

The court, by Ambrose Spencer, Chief Justice, at page 40, say:

"It does not admit of a doubt that Moore was *a partner* with the plaintiffs. The articles do not provide for the advancing of money by the plaintiffs to buy the lumber; admitting, however, that the agreement authorizes that inference, MOORE WAS TO FURNISH AN EQUIVALENT *to that by his personal services* in superintending the saw pits and lumber yard, and he was, *in consideration of*

his services, to receive one-third of the net profits. Now, it is a very clear proposition, that he who is to take a part of the profits indefinitely shall, by operation of law, be made liable for losses, on the principle that he takes from the creditors a part of the fund which is security to them for payment of their debts. There is a *full, clear and decided partnership* as regards *the partners themselves*, as well as *third persons*.

The counsel opposed to us have argued the cause as if, in their view, it was fatal to Price's claim to be a partner with Seymour, that there is anything in the contract by which it is made out that there is any sort of connection between Price's *services*, *skill* and *expenses* on his part, with his *participation in the profits*.

We think it, on the contrary, to be appropriate to the case to affirm, as we do, without any fear of successful contradiction, that no case can be found in the law reports, of any joint adventure, where one party furnished the money or other capital stock, and his associate *services*, in which the *services* of the latter were not always considered and treated as the basis on which communion of profits was grounded: and still we find such cases recognized *as partnerships*, and always such, unless there was also in the contract between the parties something else to show *hiring* and profits to pay therefor *as wages*, as in the cases hereinafter discussed of manufacture of *leather*, and of *satinett*, and the case of merchant's clerks so paid.

3 *N. Hamps. Rep.* 64. *Brown vs. Cook & Robbins.*

The court say, at page 65: "Nothing can be clearer than that when two men are jointly concerned in any transaction under an agreement to share between them the profits of the business indefinitely, they must be considered as partners in the transaction. (Citing a number of cases.)

On the subject of equality of labor and services to money as capital, see—

3 *Bosworth, N. Y. Reports*, 106. (*Head note.*)

"In the absence of any decisive case in the English or our own courts upon the particular point, the court is at liberty to resort to *civil law* for assistance. The rule of such law is nearly universal, that in cases of a contribution of *labor and skill by one, and of money capital by another*, the intendment of law is that *both labor and skill* are to be compared with *the use or interest* of the money, and be estimated at that value. In such a case the money is at the risk of the contributor,—whatever is lost in the business is his loss, whatever remains (of the capital) belongs to him. He loses also the interest on his capital, and the associate of labor loses his *time and services, taken as equivalent to such interest.* The code of France has changed this rule, and made the money (capital) in such case to belong to the association, and be at its risk." (Divisible equally in case of loss, *i. e.*, the *residuum.*)

But the agreement between Price and Seymour in this case was shaped in exact conformity to the civil law, and not the code of France; because the contract provides *for the full return of both money and interest to Seymour before coming to profits*, and Price, in case of loss, or no profits, was to lose his services, skill and expenses.

In no case, therefore, on a loss, could Price claim any share of the original $5,000 invested.

Mr. Justice Hoffman, in the case last cited, page 113, says:

"A partnership may be formed, not only as to strangers, but as between the parties, in which one contributes all the money capital and another his skill and industry alone, and such a partnership may involve the entire community of the *labor and skill*, with the money, upon the footing, not only of an equal, but of a *higher* estimate and value, put upon the former (labor and skill) than upon the latter. Partnerships may and do exist, in which all the capital is contributed by one, and *nothing but his labor by the other*, who, notwithstanding is entitled to consider the capital joint stock, and claim an equal share of it, or of its produce. The law, in all these

cases moulds itself to *the intention of the parties. when that can be ascertained*, and is conformable in this respect to the doctrine of the continental jurists."

This civil law doctrine, however, as applied by the code of France, we concede, is overruled by the express provisions of contract between Price and Seymour.

Though we do not claim ownership, that is, a *present legal title*, or *seizin* in the land, nor an equitable estate of inheritance in it as land, yet we have an *equitable right to have it sold just as personal property*, into which it is converted by the terms on which it was purchased—and the ends for which purchased—and *as the contract of partnership provides*, or as Judge Story shows in the case cited above, from 3d Sumner's Rep. Price had an equitable interest in the land, equivalent to his share of the net profits, by a sort of springing trust, out of which the right to profits is to accrue on the land being sold.

This is an *equitable interest* which Stow *vs.* Robinson, hereafter discussed, and very many other cases, (Olcott *vs.* Wing, too) adjudge suitable for *specific performance*. "Again, it is a general rule," says Judge Hoffman, "that a liability for losses follows a right to profits, and in the same proportion, ordinarily."

So also Smith's Mercantile Law.
Edition in Law Library, Chapter 2, *Vol.* 2, *page* 47 *top*, (*m.* 18).

"There may be a partnership in one transaction as well as in a continuing business.

"The *community of profits* is the *criterion* whereby to ascertain whether a contract be really one of *partnership*.

"For one partner may stipulate to be free from loss, and such stipulation will hold good *as between himself and companions*, though it will not diminish his liability to strangers."

The language of Hoffman, J., is taken, as above quoted, *verbatim*, from *Smith's Mercantile Law*, which he also cites.

4 *Barn. & Cres.*, 867, *Read vs. Hollingshead, before cited*, in which the Court say, p. 841, top:

"Such partnership may well exist, although the whole price is in one instance advanced by one party, the other contributing his *time*, and *skill*, and *services* in the selection and purchase of the commodities.

"Davidson & Co., (in this case,) were General Commission Merchants, and, *in our opinion*, the stipulation that they should act in *the business free of commission*, plainly denotes that they were to act in it as *merchants* and not *as agents*."

So we say Price was to have *no payment for services, skill, or expenses* as such, and in no event could he have anything answering in any sense thereto, *unless* on the contingency of the adventure finally yielding a profit—and this, we say, "*plainly denotes* that he and Seymour *were acting therein as merchants* (*or partners,*) *and not as principal and agent.*"

The identical feature of this contract, which the learned and ingenious counsel seek to construe against Price's claims, on our construction, we submit to the court, makes ground most strongly in the opposite direction.

The case in *Barn. & Cres.* was, to be sure, one of a mercantile partnership, but the principle is the same. Indeed this partnership which we predicate, though founded on a land dealing, yet treats it as personal property, and in that sense was just as truly a mercantile partnership.

It is not stipulated, by any means, that Price shall act in the capacity of *an agent* in making the purchases, nor that the one-half profits he is to receive should be received as payment *for services rendered to Seymour*, for by the *admitted terms of the contract, when made*, Price had his eye fixed upon and looking forward to profits *to accrue to himself as well as to Seymour.*

And here, we say, the whole subject is brought into the com-

pass of a single proposition, which determines the character of the transaction as a partnership in the most unmistakable terms, thus:

Price, in consideration of sharing with Seymour one-half the profits of an adventure, agrees to render services, which being applied to the subject matter, he and his associate expect shall produce a revenue of profit to each of them.

Then certainly he agreed (and Seymour joined with him therein) he *agreed* to render services on expectation and promise of *profits* to accrue to himself as well as to his associate.

If the learned counsel can define a partnership better than this, we would be glad to listen and learn from them.

To be sure, it is said in the first clause touching this feature of the contract, "that the ½ of profits shall be in full of his services," (not in full payment *of* his services, not *for* his services,) and the repetition of the end more clearly defines the *modus* by saying "*no payment for services or expenses* will be made by said Henry except from the profits made as aforesaid."

But how were they "*to be made as aforesaid*"?—answer—as much by Price himself as by Seymour, and in that view Price is as appropriately *paymaster to himself* as Seymour is.

The English of it, interpreted, amounts to just this, and no more:

You are *to make no charge* against the adventure *for services or expenses*, and *I to pay none* (*eo nomine*) *except* (*unless*, is a better, and clearer word, for the place and intent,) *unless* your share of the profits be sufficient to cover it—as to that, call it what you please; it is indifferent to me.

Both *except* and *unless*, as English connectives, are indefinite words, and generally used as here, in a loose, undefined sense, showing a mere connection of some sort without any specific explanation thereof.

5 *Leigh.* (*Va.*) *Rep.*, 583. *Brown vs. Higinbotham.*

This is a case showing many distinctive principles of the law of partnership.

Tucker, *Justice*, at page 585 (bottom) says: "To establish it (partnership) it must be shown that the parties have joined together *their money, goods, labor or skill, or either or all of them, upon an agreement to participate in the profits*, from which *is implied* by law a liability for the losses; for no stipulation can protect a party who receives the profits from a corresponding liability for losses." (Cites 17 *Vesey*, 412.)

The court proceed at the bottom of page 586.

"Brown told Robinson that he was to receive two-thirds of the net profits of the crop, deducting all expenses. Now, the profits were precisely *the net proceeds* of the crop after deducting all expences. If he had bargained to receive two-thirds of the crop without regard to expenses, some doubt, perhaps, might be thrown over the question, but, as the expenses were first to be deducted, it is obvious that he was not only to participate in profits *but to be affected by losses*, for *if the expenses exceeded the crops he was to get nothing* (which is exactly parallel to Price's position.) This case, then, shows clearly that Price did assume the risk of losses with Seymour, *but*, whether it should be confined to the loss of his *skill*, *labor* and *expenses* in case of no profits made, and a part of the capital of Seymour sunk, is not so clearly settled.

But that he was exposed to the entire *loss of his skill, labor and expenses* is very clear by the express terms of the contract.

That this exposure to loss is in law to be deemed equivalent to *a general participation in profit and loss*, and thus *to affect the construction of the contract as a partnership*, constituting the partners partners between themselves *in the subject matter* as well as relating to third persons, we think to be clearly decided in this case as well as many others. Let it be here observed, that when we say they were partners *in the subject matter*, we do not mean that they were joint

legal owners of the land as land. That was *not* the *subject matter* of the partnership. The *subject matter* was the *sale of the land regarded as personalty*, as we have already shown. The *right to have that identical land sold* was an indispensable necessity to carrying out the contract and thus getting at the profits. *That right was expressly contracted for*, and thus became *the subject matter of the partnership contract*, and we have also shown, and shall show more fully hereafter, that courts of equity always sustain and render available that right by *a decree for specific performance, a receiver and an account stated.*

See also the dicta of the N. Y. Superior Court in 3 *Bos. N. Y., Rep.*, 106, cited above, where it is declared to be the exact and full doctrine of the *civil law* to balance losses in case of one party putting in money and the other, *skill, labor*, &c., in this way.

And, indeed, we have no doubt such a mode of division of loss is nearest in accordance with the contract itself.

The code of France, as before observed, would go much further in favor of Price, (except, perhaps, we ought to add, if it were not for the contract itself seeming to provide a particular mode of adjusting losses), and give him, in case of partial loss of Seymour's capital, (as the N. Y. Court actually did,) half the residuum of capital, after deducting the losses or part sunk. This, however, seems to us forbidden by the terms expressly contained on Seymour's part, and we are not at all confident but that Price might possibly be liable, in addition, to repay to Seymour one-half of the loss on capital if the issue of the speculation should have been disastrous, viewed as a whole.

We insist, however, that it is in no wise a necessity imposed on us to show that extent of liability for losses resting on Price. The case from Leigh seems to decide clearly that the liability to sink or lose *skill, time, labor*, &c., is all sufficient to evince the partnership, and the same is also decided in other cases. So, also, the same occurs in the next following case.

3 *Williams* (*Vermont*) *R., page* 1, *Brigham vs. Dana.*

"To constitute a partnership, it *is not* essential that the parties should be liable *to share indefinitely in the* losses. If they participate in the profits and are liable to *bear or be affected by the losses to only a limited extent*, it will be sufficient. Nor in a general partnership *is it essential* that they should *be proportionate joint owners of the property of the concern.* The whole capital may, by a stipulation to that effect, be the property of one only of the parties, while *the joint* participation of the net profits may be such as to make them general partners.

Here is the precise point we inferred from the last preceding case distinctly stated.

Redfield, Ch. Just., very clearly states it at page 9, in this case.

"II. It does not seem to be requisite to the constitution of a strict partnership that each partner, as between themselves, should be liable to share indefinitely in the losses of the concern.

"An agreement to share in the profits, and consequently in *the losses, as they affect the adventure*, will ordinarily be held sufficient to constitute *a strict partnership.*" (Cases cited.) And in the present case, the views we have taken of the proper construction of the contract, *it is obvious* that the plaintiff was liable *to be affected by the losses* to the full extent of his capital and anticipated profits; and III., page 10: "It is certainly not necessary to the constitution of a general partnership that the partners should be proportionate joint owners of the property belonging to the concern, or some of them, and out of which the profit is expected to arise, although that is the more common condition of the title and the natural implication in the absence of some stipulation to the contrary.

"But it is not uncommon, and the cases certainly sanction the stipulation, that the capital of the concern shall remain in one or more of the number, less than the whole who may have furnished it. All that seems indispensable on this head is, that the parties should be jointly interested in the profits, *or affected by the losses or net*

profits of the concern. So, that taking the case in all its bearings, we do not see why it may not be regarded as *a partnership in a single adventure.*"

These principles need from us no amplification or argument to show conclusively that Price was *strictly a partner with Seymour in the adventure*, entitled, of course, to maintain a bill for an account, as auxiliary thereto, as he fully performed all his parts of the contract. And, moreover, is entitled to a decree for the sale of the property that remains unsold, and out of which the profits are to come.

Stow vs. Robinson, (24 *Ills. R.*, 532) *cited by defendant's counsel*, decides this expressly: "*Or Rattray might have compelled him* by bill to permit the sale of the lots to proceed." The court also say, that even the existence of a remedy at law in Rattray would be no bar to his remedy in equity.

In *Porter vs. Ewing*, also *cited by defendant's counsel*, (same, 24, vol. 617,) the question was whether Porter had such an equitable estate as entitled him at any given time to demand from Brown a clear deed to himself, the decisions having settled that the equitable estate of the husband (in order to entitle his widow to dower) must be *an estate of inheritance*, which would have descended to his heirs on his death, and the court say, he clearly had no such title or estate. (See 1 *Scammon R.*, 315, *Sisk vs. Smith.*) "A widow can be only endowed of estates of inheritance; the statutes making equitable estates subject to dower clearly refers to equitable estates of inheritance."

Now in *Porter vs. Ewing*, notwithstanding the proof shows and the court say, in the very opening of their opinion (p. 618), that Porter "*for his skill, care and trouble in the business, was to have as his compensation, one-half of the profits derived from the operations with the* $1,000, and *Porter had* and was to have *no interest in the land* or other property purchased with this money. *He had an interest in one-half of the profits, and that only.* This was a mode

of compensation for his services. Can any one doubt, after reading Stow vs. Robinson, (decided at the same term, and, indeed in the case of Porter vs. Ewing, the court refer back to their cotemporaneous decision in Stow's case). *Can* any one doubt that if you only suppose Brown to have acted towards Porter as Robinson is supposed to have done towards Rattray, i. e., *refuse to ratify sales by giving deeds*, that Porter (just as the court say Rattray could have done under exactly like circumstances) might have compelled him by bill to permit the sale of the lots to proceed and thus keep his part of the contract.

The cases would then have been (in the case hypothetically put by the Sup. Court, with respect to Rattray) precisely parallel. Porter would then have had no other way to get his profits.

Should opposing counsel claim that this militates against our doctrine with respect to partnership, we answer: Not in the least; Porter and Brown were clearly *partners in the profits*, as, also, were Robinson and Rattray, and that *partnership in the profits* implies and draws after and with it an equitable right in the land itself, by virtue of which the person so situated is entitled to have the land sold and the contract specifically performed.

Both cases involve the same identical legal and equitable principles. But questions about *partnership* were not raised in either case; one was purely a *dower* question, and so argued, solely. The other was presented purely as *a case of specific performance*, in which one party, as the court say, (Rattray) had not at the time of his death fully performed his part, and *for that reason only* they say he cannot have a decree, but are careful to add, "that if Rattray *had performed* before he died, *he might have compelled him by bill to permit the sales to proceed*," or, in other words, he would have been entitled to a decree for specific performance.

On what ground, we ask? Answer—Evidently on the ground that they were *partners in the* profits, and that *there was no other way* in the world that was adequate to arrive at that result, embracing—

1st. *A partnership account, stated,*—as one all important item; and

2d. *A sale to eviscerate the profits.*

If the cases referred to had been discussed by the counsel as involving partnership principles, then, no doubt, the court would have discriminated so as to show that in each case there was *a partnership in the profits*, notwithstanding that the half of net profits of Rattray & Porter were designed to merge and cancel any extra claim on the irparts respectively, for *skill, services, labor and* expenses.

For in such case, as we have already, we think, fully established, there is no necessity that complainant should show, as partner in the profits, that he also had an *ownership*, or legal title in the partnership stock. It is sufficient if he have an equitable interest to be protected in the land. The case cited from 3 *Sumner R.*, by Judge Story, also declares this equitable interest in the land to be a sort of springing trust.

7 *Ohio State Rep.* 172. *Wood & Oliver vs. Valetta et al.*

This is a case very strongly establishing the positions we contend for, and the clearness, force, and compactness of Mr. Justice Sutliff in pronouncing an opinion in which the other four judges concurred, must be our excuse for largely extracting from it.

FACTS.

Valetta, on 20th September, 1844, by written contract, agreed with Lewis to loan him $1,000, and draw for same, in merchandise, as he might want it, and to use his influence to procure certain patronage to the store: Lewis to prepare books, take an account of stock, and manage the business (canaling) for one year. That the parties, on an account taken, divide the profits equally between them.

The suit was brought by a creditor on a note signed by Lewis only, charging or seeking to charge the partnership.

The Judge says, at *page* 176:

"It is a misnomer to call this, as they do, a *loan;* it is an *advance*," (because instead of receiving it back he is bound to draw the amount in goods therefor from the store). Valleta agrees to contribute his labor, skill or influence to procure patronage to the store. Lewis, on his part, puts in his labor and skill in conducting the business, and the writing provides that Valleta, in consideration of his advancement and services in procuring patronage should receive one-half the profits made in the enterprise."

Now, the first legal proposition taken by his Honor, is this:

"As between the parties to this agreement, these provisions are sufficient, *it cannot be doubted* to constitute *a partnership inter sese.*"

The court will still observe that Valletta, in this case the person *seeking* to repel the partnership idea, was by contract to receive his one-half profits *in consideration of his advances and services.*

And here we think it will not be out of place to remark: There is scarcely any case of any partnership constituted in the way that Price and Seymour's was, and as in the case we are *commenting* upon, where partnership is established by the courts, (and the multitude is great of just such partnerships,) in which on examination, it will not be found that the contract specifies, in strict analogy to this that the one-half profits are given, as here, expressly for skill, labor and services.

Still the counsel rely on such a recognition in Seymour and Price's contract as evidence that there was no partnership whatever.

But not so the five Judges of the Supreme Court of Ohio. They say, notwithstanding that feature, "*it cannot be doubted these provisions are sufficient to constitute a partnership inter sese.*"

"The Ohio Court then goes on to say, with respect to the next provisions of the contract, i. e.

"1st. That Valletta shall not be responsible for any loss beond the profits of the enterprise.

"2d. That *the writing shall not be regarded* as constituting a partnership between the parties to it.

"This concluding paragraph *may* very essentially qualify the effect of the instrument *as between the parties.* It cannot, however, affect the character of the contract so as to change the relation of the defendants otherwise thereby established towards third persons; they are provisions strictly *inter sese.*"

Notice, the court does not say those provisions *do essentially qualify*, but only that they "*may essentially qualify.*"

What the opinion of the Court was at last on that point is fully announced on next page, i. e., "*that they do not qualify essentially* the partnership *inter sese.*"

The words of the court at page 177, reviewing the whole case, conclude:

"It would, therefore, we apprehend, be difficult upon authority to find that the agreement of the parties has not all the requisites of *a partnership contract between the parties themselves.*"

This case, therefore, abundantly establishes, as between Price and Seymour, both a partnership *inter sese* and a partnership as to third persons.

His very next words, however, show that either kind or extent of partnership is sufficient, in any given case, to establish a partnership between parties, and to an account as a consequence of it—and if an account, we add also of a sale of the *res gesta* stock in trade, or whatever the partnership relates to, in order to get at the profits.

"It is even questionable (court say) if in this case, there might not be, by virtue *of this contract, not only the community of profits*

necessary to entitle each to an account, as provided for by this instrument, but also, by reasonable implication, a community of property between the parties."

To be sure, the court say below, it is not necessary, on the facts of that case, to decide the partnership to fully exist *inter sese*, because the claim sued on being that of a creditor seeking to collect his debt of the partners sued jointly, it was enough, for that purpose, if they are proved to be partners as to third parties.

Still, the court could not more fully have given their opinion touching the relation of the parties *inter sese*.

As we contend, this case (as well as others cited by us) shows that where a partnership is so established to exist by communion of profits, in every such case the complaining partner who is unjustly refused participation of profits is entitled to file his bill for an account (for which purpose it is not necessary to show that they own the capital stock together), and, as auxiliary, to an account, and without which, in most cases, an account stated would be nugatory, equally entitled to a sale of the stock in trade, lands, or whatever else is held by either partner as part or parcel of the subject matter of the adventure.

The court will please to observe, that it being established that Price or his administrator *de bonis non* is entitled *to an account of the profits*, it is yet an entire and absolute impossibility to have an account taken until after the property is sold, because the profits depend wholly on what the land will bring on sale.

The establishment of Price's right to an *account of profits* as partner, therefore of necessity draws after it a right to a decree for sale; as otherwise we would be guilty of the solecism of asserting that a court of equity had jurisdiction in a case, but no power to render its jurisdiction available to suitors. Judge Story, however, it will be seen in the case cited from *3d Sumner's Reports*, holds that the right to participation in profits is based upon the prior equitable right or interest in the land itself.

At the close of his opinion in this case, Judge Sutliff states so clearly another distinctive feature of some partnership cases, that we beg to be excused for further calling the attention of your honors to it. At page 178 he says:

"There is another more nice distinction, &c., &c. Mr. Gow states the distinction to be between *an interest in the profits themselves as profits*, and the payment of a given sum of money *proportioned* to the profits, and *Lord Eldon exparte Richardson*, 1 *Rose Rep.*, 89, said: 'If a man, as a reward for his labor, chooses to stipulate for an interest in the profits of a business, *instead of a certain sum proportioned to the profits*, he is as to third persons a partner, and no arrangement between the parties can prevent it.'"

(Price stipulated for an equal half of the profits, and not for any sum, certain or uncertain, *proportioned* to the profits.)

"Chancellor Kent (he says), in his commentaries, vol. 3, p. 25, note b, recognizes the same distinction. The following is his language: 'There is a distinction between a stipulation for labor *proportioned to the profits*, and a stipulation for *an interest in such profits*, which entitles the party to an account as a partner.'"

Will any man in his right mind venture the assertion that all which Price stipulated for, as a reward for his labor, skill and expenses, was *a sum proportioned to the profits?* And yet this (by the dicta) must be asserted in order to oust Price of his relation *as a partner with Seymour in the profits.*

How would that horn of the dilemma, which our opponents desire to impute to Price, be expressed so as to exclude him on the distinction of Eldon or Kent? We will endeavor to express it on that wise.

It would run thus: "And the said Price, for his labor, skill, time and expenses, shall be entitled to a compensation from said Seymour, which in any event shall be equal to half, quarter, or other portion of the net profits which may be made, after returning to

said Seymour the original investment and interest, and also taxes and other expenses incurred by Seymour, with interest, of all which Seymour agrees to keep an acccount.

We submit this would be the distinction fairly stated, and nothing less than that can set Price adrift from a fair and honorable participation in profits as a partner thereof with Seymour.

The contract says that Price shall be entitled to receive, *and there shall be paid him one equal half of the profits.* Can anything be more express? Is there anything equivalent to *a sum* or *a certain sum*, bearing any "*proportion*" to the profits, great or small? No—he is to have an equal half, and Seymour the same, adding first, that such half shall be in full of time, labor, skill and expense, and repeating afterwards, to make sure, a mere equivalent of that, to wit: *that no payment* shall be made by Seymour for labor, skill or expense, except from the profits.

And, by the way, the very form of this last expression, "from the profits," implies distinctly that it will probably take but a small part of the profits to cover that.

Another inquiry: Will any man in his right mind pretend to say that Price, as a reward for his labor &c., *did not* choose to stipulate for an interest in the profits of the business?

Yet you must go that full extent by these authorities *ex cathedra* of *Lord Eldon and Chancellor Kent*, in order to deprive our client, Jeremiah Price, or his representatives, of their standing and account as *a partner.*

The fact is, Price, by his and Seymour's contract, is *so clearly* and *unmistakably and directly* as much interested in the profits as his associate Seymour, that it is to us the greatest marvel of hypercriticism possible, that counsel can be found to assert the contrary.

And this marvel is in no degree lessened by the fact that they are forced to predicate their criticism on the use of words in the con-

tract referring to *compensation for services, skill and expenses*, which same words, or even stronger, are used, we think, as freely or more so, in every reported case of *a partnership* similarly constituted and *established and allowed* by the decree of the courts and an account ordered as well as a sale.

And besides, the authorities last cited, as well as very many others, *use the same words* in defining, elementarily, the principles which establish a case as one of partnership, involving the right to an account of profit, and a sale of the land, or whatever else is made the subject of the partnership. The opinion of Judge Sutliff closes thus:

"Indeed, we apprehend that the rule is at this time well settled that even an agent cannot stipulate with his employer to receive an interest in the profits, other than of *gross profits*, as a remuneration for his services, without thereby becoming a partner as to third persons. *If the contract be that he shall receive for his compensation a certain portion of the net profits*, the agent will thereby become a *partner* to third persons.

There is no room for dispute that it *was net profits* whereof Price was to receive half, and it is equally clear that he was entitled, and the contract contemplated that he would receive, in all human probability, vastly more than expenses and day wages.

There is no semblance in the contract, of Price standing in any inferior relation or character as *agent, hired man* or *employee*, doing another man's business.

Besides, a recurrence back to the history of land speculations, in the epoch of 1835, shows what these parties meant by their contract.

The case of Olcott vs. Wing, in 4th *McLean*, is itself *a historical case*, as well as the California partnerships reported.

Capitalists were greedy all through the Eastern States to turn over their capital in Western lands; but, unwilling to encounter

the labor, and knowing themselves *novices* in the business, they sought out *experienced, prudent* and *shrewd* men residing at the West, to take an adventurous interest with them, and *thrice lucky he* who ever chanced to secure such a partner as Jeremiah Price!!! This very contract and the developments of this suit show it.

Hence they offered full participation in the net profits, (*looking out well for the safety of their capital and its interest and expenses!!*)

38 *N. Hamp. R.*, 309, *Bromley vs. Elliott.*

This case contains some principles and illustrations which have an important bearing on the case between Price and Seymour.

Bell, Justice, says, at page 309:

"The *essence* of the contract is, that they should be *jointly concerned in profit and loss*, or profit only, the relation of partnership being established by the fact that they share the profits between them."

"They are bound as partners to third persons by all arrangements within the apparent scope of their business."

"But *as between themselves*, their stipulations, so far as not forbidden by law, are binding, and we know of no rule by which persons are forbidden to be *partners as to the profits* of a business carried on by them jointly, *though as to all the property employed in the business they may be several owners.*"

Just below, again, he says:

"*The legal test is found in the apparent scope and character of the business.*"

The last words underscored are those on which we desire to build up an illustration on the subject of *partners as between themselves* in cases where the property is owned by an individual member or members of the concern.

The distinction we wish to notice is particularly this:

In the case of *Ward vs. Thompson*, cited above from 22 *Howard's Rep.* 330, the partnership consisted *in running* a steamboat for the carriage of passengers and freight.

Ward alone contributed and owned the boat to be run; Thompson, the other partner, contributed time, labor, skill, &c.

Now, in all such cases, (and the multitude is very great, as our citations show), there is or can be no pretence or ground for alleging that the partner, situated as Thompson was, in order to state or claim an account of profits, would be entitled to have the steamboat sold, because she was in no bodily sense put into the partnership, *but only the running of her was put in.*

Or in the clear language of Judge Bell: The steamboat itself as an article of sale outright was in no wise *within the apparent scope of the business.* That was not the *character* or nature of the business, and of course the idea of selling the steamer would be as foreign to *the scope and character of the business* as would be the sale of Ward's dwelling house.

Now, apply the principle to the case between Price and Seymour, and the *apparent scope and character of the business* gives you an illustration of the same principle in a different aspect.

So different was the scope and character of Price and Seymour's business from that in the steamboat case, that the land purchased, the title of which was vested in Seymour, was itself *bodily and materially the very substance and subtratum of the partnership*, in the sense *or view of being sold*;—bought for *sale* and for nothing else;—and the very idea of profits is a *bare nullity or myth* unless it be sold. Here we see the land or separately owned property was not only *put into the partnership*, but it was *the whole of it.* The partnership did not relate to or concern anything else; it was property never designed *to be used* (as the steamer was), but merely to be *traded in as personalty*, and the profits were to come out of it.

Ward's steamboat was as much his (as to title) while *being run* as before, and was to be returned to him *in solido* as soon as the term of *partnership running* should expire.

Not so with the lands in controversy in this case;—that could not and was not ever to be returned to Seymour, after being sold, verifying the old maxim which here becomes sound law: you can not *eat your cake and have it.* Seymour,s we insist, wish both to eat the cake and to have it.

This evinces to our minds beyond cavil, and within Judge Bell's clear statement of the law touching *the apparent scope and character of the business*, that price and Seymour were partners between themselves.

If they were not such partners in the land bought for sale, then indeed we have proved a partnership which did not concern or relate to anything; which is a *contradiction in terms.*

Having established the partnership, we have a right to the corrollary thence depending, that no *staleness* or *statute* of *limitations* can be urged against it or the remedies sought thereof.

These branches of the subject will, however, be more fully discussed hereafter.

RIGHTS OF PARTNERS ON THE SCORE OF SPECIFIC PERFORMANCE.

1 *Halstead's N. Jersey R.*, 229, *Knight vs. Robbins.*

A and B agreed that A should furnish 2,700 peach trees at *his* expense: B to plant and cultivate them on his farm at *his* expense, and should also pick and *market* the fruit during the life of the trees at the joint expense of the parties, and account to A for half the net proceeds of the sales.

A died, and the administrator of his estate sold his interest to D.

Held, that D could come into court for *the performance* of the

agreement, and for an *account* and payment of half the net proceeds of the sale.

This case essentially decides all the contested points in Price's case.

Observe how, in strict parallel to Seymour and Price's case, A, who furnished all the trees, *died*, and his administrator sold his interest to D; and D, a stranger to the original agreement, filed the bill, and the court enforced the agreement by decreeing *specific performance, ordered a receiver for that purpose, and required an account of profits.*

Same volume, page 642:

This case came up a second time, on *appeal* to the Court of Errors and Appeals, and after argument was *affirmed.*

Chief Justice *Green*, in the same volume, page 643, delivers an elaborate opinion.

He discusses the point of *specific performance:*

He says, at page 645—

"I regard the agreement as a special contract, under which Jacques (A) is to be remunerated for the cost of the trees by receiving a share of the profits."

Still the court decree specific performance, notwithstanding they expressly hold that the partnership extended solely to the profits.

And in this view it establishes the position, unanswerably, that a partnership *in profits merely*, is amply sufficient to ground a decree for both: 1. An account to be stated, and, 2, For specific performance of the contract.

"Jacques," (A) the court say, "retained no interest in the trees, much less in the land on which they were planted. They became a part of Robbins' (B's) freehold, and in law he became

seized of them as fully and exclusively as of any other part of his freehold."

The court also say, (which is emphatic to us in Price's case)—

"*True, he* (Robbins, B,) *was a trustee in equity*, bound by virtue of his trust to cultivate the trees in a careful and husband-like manner, bound to preserve them from waste and destruction, and bound to account to Jacques (A), his legal representative or assignee, for his share of the profits.

"Jacques, *as cestuy que trust* of one-half the profits, was entitled to have the trees properly cultivated, and the fruit properly marketed."

The case clearly shows that the death of Seymour and of Price, has in no wise varied the rights and remedies of the parties, inasmuch as both survive to *personal representatives*, and even more, to *an assignee* of either party, (as was the fact in the New Jersey case.)

Again: Parallel to our case between Price and Seymour:

"At the time of filing the bill, the existence of the trust had been denied by the appellant, (*just as Seymour now denies the right of Price's personal representatives*). The complainant sought to have the trust established, (just as *we* do here). The trustee claimed an exclusive control over the trust property, and a right to deal with it to the prejudice of the interests of the *cestuy que trust*, (as Seymours now do). The bill sought to *restrain* the exercise of that power, so far as to *prevent waste* and to *protect* the interests of the *cestuy que trust*. These were unquestionably proper objects of relief in equity, and the court having once obtained jurisdiction of a cause for one purpose, will retain it for the more important purposes of the suit."

The court say, therefore, the supplemental bill to ask specific performance was, in fact, entirely unnecessary.

Thus, the court see, the case establishes, incontrovertibly, the

doctrine of *trust*, applied to Seymour's heirs as trustees for Price, together with all its consequences.

Among which are: That *time*, or *the statute of limitations* never runs against *a trust*, nor the charge of staleness; this, also, cannot commence to be predicable until an ouster. Because the trust opens the door to all the "*equitable circumstances*" (the necessity of which is so much and so frequently adverted to in the Books) as explanatory of *the delay* of suit.

Smith's Mercantile Law, page 35. *Law Library, vol.* 2, *page* 56.

"As Courts of Law cannot examine the accounts of partners among themselves, it follows that Courts of Equity will do so, for otherwise there would be a defect of justice, &c."

"On taking this account, the court has power to order a sale of the partnership effects, and a division of the produce in the proportion, to which it considers each party entitled; *in fixing which it takes* into consideration, not merely the balance on all transactions completed at the period of dissolution, *but also such as were at that time pending, and from which profit or loss has since resulted.*

This authority throws light upon the present attitude of facts and accounts, in the case of Price and Seymour, as before stated.

To make it perfectly intelligible, we beg leave here to repeat *seriatim* as the facts occurred.

Mr. High sold four parcels of land, in the whole amounting to $69,200. See accounts annexed to bill (200 acres).

Mr. High, down to the time of filing of the bill in this case, had received from sales, $33,598 40.....	$33,598 40
From which deducting expenses, commissions, &c....	2,742 61
Balance is net proceeds of all sales.....	$30,855 79
Paid by Mr. High to Mr. Seymour's heirs, see stipulation admitting it.....	12,366 67
Balance on hand at time.....	$18,489 12

This amount, or the residuum thereof, Dec. 7th, 1859, held under stipulation subject to the order of this court, which stipulation is on file as an equivalent to an injunction.

On December 7, 1859, this amount, or so much of it as had not been (after the suit commenced) disposed of, or paid over by Mr. High, was placed, by mutual consent, in the hands of Mr. Coventry, so as to be placed where it might draw interest, and also be accessible for payment of taxes annually on all the lands. This Mr. Coventry, we have no doubt, has faithfully done.

Mr. High had sold only four pieces of land, all of which were standing on *contracts* for sale on payments due from year to year.

These, also, with the balance of cash, were all placed in the hand of Mr. Coventry, to follow up for the benefit of the fund.

This point (specific performance in partnership cases) is so fully discussed in many of the sections already inserted above, that we shall only refer to a few cases in *Story Eq. Ju.*, on this subject, with a few words extracted to give the leading idea:

2 *Story Eq. Ju. Sec* 715. "The jurisdiction to decree specific performance is not *depended* on or *affected* by the *form* or character of the agreement. It must be a *binding* agreement for a specific object."

Sec. 720. Other illustrations?

"Covenant to leave stock on premises at expiration of lease."

Sec. 721. *Injunctions* granted in the nature of specific performance. It *in effect* secures specific performance.

Sec. 722, *a p.* 35. Will grant injunction to prevent *breach of covenant*, thus securing specific performance, *quoad hoc.*, or *pro tanto.*

Sec. 725 "Decree for specific performance by building a house of particular *form* and *size* on specified land." P. 38.

Sec. 728. Specific performance cannot be declined by court if legal remedy is *doubtful*, as to *nature*, *extent*, *operation*, or *adequacy*.

Sec. 730. Specific performance decreed when actually no wrong is yet done or consummated, on the principle of *quia timet*.

We consider this all important to Price and Seymour's case. It is true, and the bill and answers show the gravest reasons for Price's representatives fearing a total loss.

Seymours began to sell. They got back their whole investment and interest.

They were proceeding under whip and spur to transfer the proceeds of the lands out of the jurisdiction of Illinois courts, covertly aiming, as complainant feared, to keep out of view any open rupture,

And never, until we got the *answers* filed, were we able to show them, by direct proof, as having assumed a *hostile atitude, directly hostile to Price's estate.* This all came *in invitum.*

And now, behold, they turn upon us and confess the charge by openly saying in their answers that *they are rich*, and able *to respond in damages*, and the *New York Courts, they say, are open to us!!*

But just suppose, if you please, suppose we do not desire to walk into that trap—what then?

Sec. 740.

"The *heir* of *vendor* (and of course we say of whoever is bound to sell and convey,) is bound to convey in case of ancestor's death.

This also shows *contrary to the answers*, that the land actually *descended* to Seymour's heirs.

This does not in the least militate against our doctrine that the

land, *in purview of Price's contract with Seymour*, is personal property.

In *that purview*, indeed, it is—BUT *it is* yet *terra firma*, with the same *ponderosity and material* as before, and by the theory of real estate in English Common Law, must always have *a legal owner* who may be quite other than either,

1st, The equitable owner, or,

2d, The person or persons having a right in equity to have it sold, in order to extract some equitable right the claimant has in it, which is exactly the situation of Price in this case.

See. 741 *closes thus :*

"Whoever would assume *the existence of a right to damages in an action at law*, as *the true test of jurisdiction in equity*, (i. e., to grant *specif. perf.*), would find himself in endless perplexity, &c." *Sec.* 751 *says, emphatically :*

"When, indeed, a contract respecting *real property* is in its nature and circumstances unobjectionable, *it is as much a matter of course for courts of equity to decree specific performance of it*, as it is for *a court of law to give damages for the breach of it.*"

Sec. 771.

Shows *delay* of suit may always be *explained by equitable circumstances*, and thus forms no objection to relief.

Even, it is said, where the claimant seeking relief has not fully performed, it is not *fatal*, if the point of non-performance don't touch the essence of the contract.

Sec. 776.

"Time *is not* generally deemed in equity to be *the essence of the contract unless the parties have expressly so treated it, or it necessarily follows from the nature and circumstances of the contract.*

Sec. 788.

Specific performances justly decreed against:

1st, Privies in estate.

2d, Privies by representation.

3d. Privies by title.

24 *Ills. R.* 532. *Stow vs. Robinson.*

We here *again* refer to the case of Stow vs. Robinson, which the counsel for defendants cited on the argument; a just consideration of which, as we think, instead of favoring the defendant's views, will show that it is strongly corroborative of the equity of the complainant's claims.

In this case the court says, expressly (page 535):

"And so long as any portion of the property remained unsold by *Rattray*, his part of the contract *had not been executed, and for want of a full and complete performance by him*, when the remaining portion is being incapable of being performed, *a specific execution of the contract cannot be decreed.*"

And again:

"If this is true, (that Robinson *prevented* Rattray) and Rattray was in no default on his part, an action at law accrued for a breach of the contract for the recovery of all the damages he had thus sustained, OR, *Rattray might have compelled him by bill to permit the sale of the lots to proceed, and to keep his part of the contract*, as he was then able to render the service which Robinson had contracted to receive."

This case shows precisely what we wish to establish, *viz:* That *specific performance* or *execution of contracts* will be decreed on the ground that the party seeking it has no other means of getting at his share of the profits, which applies to all purchases of land on speculation *inter partes*, where the land was bought for sale, and of course no profits can exist except by means of a sale.

It also decides, that if the circumstances be such that the injured party may even sue at law, still that is no bar to his proceeding in equity, where he has either performed or is ready to perform on his part.

Now, it is clear that *Price* was nowise in default. He fully performed on his part. But he could not possibly allege any gravamen or default against Seymour's heirs until after the five years had elapsed.

Then he might, provided the facts were such as to show that he had put Seymour's heirs in a condition of default, by demanding a sale. Such a demand would, no doubt, have been judicious, if Price had then desired to file his bill in equity, (for it is the plainest of all positions that he could not then have brought an action at law against the heirs of Henry Seymour, who died before the five years expired, inasmuch as there was no privity of contract between Price and Seymour's heirs). Still we do not, by any means, concede that Price was under any obligation to make a demand. It is clear that he was not under any such obligation.

The case, however, as made by bill and answer, shows that, by mutual acknowledged and patent facts, it was not for the interest of either party to have sold either within or at the expiration of the five years, the time first fixed upon.

The matter of selling, therefore, went over without actual wrong or default on either side, so far as any proof exists to show it.

The parties did the best they could; they mutually nursed the thing along; they kept accurate account of expenses; they watched the property; prevented trespasses; guarded the timber, cut and sold the grass.

And as soon *as possible*, the sales commenced (in 1855). Price died in 1854.

And, cotemporaneously, Price's administrator, (as soon as he had returned to Seymour's heirs the amount of original investment and expenses and interest), made his demand for establishing his right to and receiving, according to contract, his half of profits, *and never was refused* until 1856, the year before he filed this bill. (Bill filed February 3, 1857).

All the defendants (except Horatio Seymour), admit that Price never did an act *with any view* to excuse the Seymours from executing the contract to the letter.

Horatio Seymour says, Price *excused and waived* this right to a sale :

But no proof is thereof given, and it is too plain to need any argument that the burden of proving that fact, rested on the defendants.

Price, then, or his representatives on bill filed, stand in precisely the same condition now as to *the right of sale* and one-half *the profits*, which he stood in at the end of five years, (i. e. in 1840) unless his claim is justly and hopelessly denominated stale, or unless the statute of limitations bars it.

It is not stale, because the delay of sale is perfectly accounted for by equitable circumstances, which reflect injuriously on neither party, but show them to have been acting in perfect concert and agreement with Price, as touching delay to sell.

Besides, the case is utterly destitute of all the elements whereon, in such like cases, *staleness* is predicable.

Instead of *change* in the property itself, it all exists *in solido unchanged.*

Instead of *improvements*, it is all now, and always was, *unimproved* land, bought on speculation.

Instead of *third person's rights* intervening as *sub-purchasers, creditors or incumbrancers*, it was bought all for cash, and held by

independent capitalists, on both sides, and there never was an *incumbrance* or any sale which is sought to be disturbed.

Instead of *enhanced value by lapse of time*, making a case to show *selfish lying by* in Price, there is, in that respect, a perfect mutuality or reciprocity of self-interest between the parties. (We insist, indeed, on the facts, we might more naturally *accuse them* than they *us*). Besides, that very circumstance of *enhanced value by lapse of time*, THAT, we say, is the very thing both the parties hoped for so long in vain, and waited for with such *exemplary patience*, but at last realized after both were dead; realized it in their heirs and representatives; and that hope and expectation, as we have before said, was the sole inspiring motive of both parties in making the investment.

By lapse of time, and that only, the purchase has at last come to answer the end for which it was made.

Why should not the parties wait? Both were able—the property was paid for! It was a splendid investment, (as any man of experience and judgment may see, on merely reading over the schedule, showing some thirty-four or thirty-five parcels of land, mostly in eighty acre lots, (only two of one hundred and sixty acres) in the vicinity of Chicago, in the four counties of *Cook*, *DuPage*, *Grundy and Will*), one of the most so of any made in modern times; and all owing to the *sagacity* and the *skill* of Jeremiah Price, and his cold-blooded, calculating and far reaching *cunctation* and patient waiting for maturing events.

The counsel opposed to us asked why Price did not proceed to sell, or demand a sale, during the last year of his life, say along in 1852, 1853, or 1854? ? in which last he died? ? ?

One answer, and that *all sufficient*, was, the *selling* of the land was none of his business.

He was not even under obligation *to demand of the other party* that he should sell. The omission of such demand never operates

against a partner or any person towards whom another stands in a fiduciary relation, as is shown to be the case between Seymour and Price. 5 *Leigh's R., after cited.*

Moreover, we insist that the event shows in the clearest possible manner, that the sales under Mr. High (*administrator and brother-in.law of Price*) commenced in *exactly the right time.* They commenced in 1855 and 1856 (*as the accounts annexed to the bill show*), a time when, as is notorious, real estate was at its MAXIMUM before the financial revulsion of 1857.

Just before that time the drainage system of Cook county was in process of execution, or just completed, and began to develope its splendid results, affecting not only lands in the vicinity of Chicago, but, by the impulse it gave to *this metropolitan city*, affecting mediately all the lands in adjoining counties, and even remote parts of this State and others tributary to this city, as a market for their products.

Price died in July, 1854, and sales commenced immediately, as the fruit of growth and expansion in Chicago; sales which, on an investment of less than $1,000, brought in a revenue of $69,200.

Extracts from accounts annexed to the bill and admitted to be correct:

1853.	Jan'y 8.	Drainage tax paid			$ 25 00
"	June 1.	do	do	on 2 80 acre lots	200 24
1854.	April 8.	do	do		154 00
"	" 24.	do	do		122 00
	Paid by Price				$501 24
1854.	Dec. 11.	Drainage tax paid by High			129 00
	Total Drainage taxes				$630 24

We beg leave to cite a few more entries in Price's accounts, to show this honorable court the *scrupulous honesty* and *extraordinary vigilance* with which these *accounts* were kept, and these *lands guarded.*

CREDITS TO SEYMOUR.

Dec. 20, 1841.	By premium in exchanging funds for taxes,	$6 25
Nov. 22, 1848.	By part of Road tax refunded.....	3 40
Jan'y 23, 1843.	By reduction of State and County tax, $4 48, paid $3 64.....	84
		$10 49
1845. March 11.	To Cook county tax of 1844, $29 64, cost of advertising same, $1 53, (because funds not sent).....	31 17
	To Postage to Joliet to get a tax canceled (tax on 80 acres sold *after* tax of 1843 paid).....	30
July 21, 1853.	To 7 per cent. int. on $200, 24 months 21 days.....	2 03
June 16, 1854.	To 6 per cent. int. on $66 20 two-thirds of a month.....	22

("but omitted in adding," because, as we say, the accounts balanced without it.)

FROM MR. HIGH'S ACCOUNTS—CREDITS TO SEYMOUR:

6 credits for *grass* sold off the land.....$26 00

(*Care and labor of Price no sinecure job.*)

1850. July 19.	By cash from John N. Nethlar Schaffer, 12 cords of wood cut, as he says, by mistake on S. land.....	12 00
" Dec. 16.	By cash of do. by like mistake on land in T. 41, 14.....	13 50
		$25 50

Remarkable agent!!!

Why? Why? we ask, such *extraordinary, unheard of vigilance?* such *devoted* and *consuming care?* such *eagle-eyed watchfulness?*—what else but *profits* inspired it, and the *relation of partnership?!* Did not the sales commence at *exactly the right time?? Who could* and *who would* have *timed it better?*

The answer says they always consulted Price, and the events show he advised correctly, both for his own estate and for Seymour's.

So much for *staleness*, observing, only that the *circumstances under which the purchase was made*, and *the delay of sale*, indeed, all that followed, up to the time of sales commenced, proceed upon grounds perfectly *negating and repelling* any possible charge of *staleness* or *neglect;* negating and repelling, we say, because they perfectly explain and account for it, showing delay, under the circumstances, to have been *an elementary* part of *the plan of operation*, as practically carried out by both parties.

And as to *the statute of limitations:*

It does not appear in this case that Price ever had any cause of action at law upon the partnership contract in question.

On the supposition that Robinson prevented Rattray from selling, the Supreme Court of Illinois say, that Rattray might have been sued at law, or, at his election, have filed a bill for *specific performance.*

Not so here. On the contrary, it clearly appears that Price *never*, in his lifetime, had any *legal* cause of action. He could not have sued Henry Seymour at law, for he died before the five years expired—against *the heirs* he could bring no action at law, for there was no privity of contract between them on which to predicate such an action.

And even if he had, inasmuch as down to the time of the commencement of this suit (Feb. 3, 1857), he had taken no steps to force a sale, but had apparently acquiesced in Seymour's delay, on account of the state of the market,—for, land being depressed, there is no sort of ground for the counsel opposed to us claiming that *we had a cause of action at law*, until this suit was commenced, and if his administrator then had a legal remedy, the case of *Stow vs. Robinson* shows that it would only have been a *concurrent remedy*, with an equitable one co-existing (OR, "Rattray might have compelled him [Robinson] to permit the sale of the lots to proceed").

It is clear, however, that Price, at no time prior to the present suit, was in a situation to sue *either at law or in equity.*

The prevention of Rattray by Robinson, was equivalent to *an ouster.*

If the refusal of Seymours to settle with Price's estate after his death, and the negation of his rights by the answers in this suit, are claimed to have been equivalent to an ouster, so as to create a right of action at law, what becomes of the impediment which we find lying square across our path in that direction, *that the circumstances of the case* at the time were such that the damages were incapable of being ascertained at law, as they depended on a sale, and could arise, *as profits*, in no other way. It was, as we claim, to have established a partnership contract: and who ever heard of partnership rights being enforced and obtained as profits by a suit at law against the heirs of a deceased partner? *Indeed*, do not the law cases cited show, that on the death of Seymour, or of Price, either or both, all *legal remedies cease forever?*

The period intervening Price's death (July, 1854) and the bill filed, was occupied and consumed down to bill filed, in Feb. 1857, in negotiation between Mr. High, as Price's administrator, and Seymour. They then prepared to sell. It is in the highest degree probable, from the answers, that Price himself had advised a sale to be commenced speedily.

But Mr. High's first object, on sales being opened, was to return to Seymour's heirs the original *investment*, with *expenses* and *interest.* This was all sufficient for the period intervening, until the bill was filed: sales then had progressed to $69,200.

The court decided the demurrer in May, 1859.

By that time, or before, the land again went down in market, and it became no object to press a sale on the part of Price's administrator, and never has been an object at any time since, until now.

We submit, therefore, that in cases of this kind, delay is an elementary principle of the business itself.

The *first* delay was *no more singular* than the *last*, and affords no more ground for mutual crimination and recrimination between parties standing each in the same relation to the coveted object of their speculative adventure.

Both delays proceeded on one and the same principle; either party eyed the main chances with intense watchfulness; whenever *one started* the other *sprung*, and so it stands; a great amount of *net profit* has already accrued, and still greater remains in the open vista of the future. 100 acres, only, sold, and 2,340 acres and more remain yet for sale.

We trust the court will take pains and have the patience to read over Mr. Price's accounts and schedule of lands purchased, and also Mr. High's accounts. They are full of meaning and instructive on subjects vital to this suit. All of Prices accounts and exhibits are exact copies, *verbatim et literatim*, from his books. But they are too voluminous for us to dwell upon them.

Another case relied upon by defendants' counsel was that of

24 *Ills. Rep.*, 618, *Porter vs. Ewing.*

Which we have partially considered before and now resume. This case decides clearly that Porter had no title, i. e. no legal title, to the land in question, of which he negotiated the purchase and took deed by agreement, vesting the title in W. H. Brown, just as in Price and Seymour's case.

The aspect in which the court looked upon the transaction was to see if Porter had such an *equitable estate of inheritance* in the land as would make his wife *dowable* under our statute, which gives the wife dower in equitable as well as legal estates. The court decided he had not an *equitable estate of inheritance*, inasmuch as there was never a time when he was entitled as between himself and Brown, to demand a deed to himself of one-half the land;—he

had never contracted for one-half the land, but only for one-half of the profits. He was charged to make sales, and not Brown; Brown was to give deeds to ratify Porter's sales, and Porter sold out one-half to Ewing and Duncan *while the whole was in fieri*, and Brown gave deeds to them as purchasers, keeping the other half as his equivalent. Brown held the title *for purpose of sale*, (and for his own security no doubt,) for which purpose it was bought—(just as between Price and Seymour). It was treated justly as personalty. Porter's only interest, as viewed at law, was *in profits*, and that made him a partner with Brown; but the court had no occasion to go into that branch of the law in a mere *dower cause*.

Just as in case where a man purchases by contract without full payment and assigns his contract. His assignee pays up and gets a deed. The court say the widow of first purchaser is not entitled to *dower*, because at no time prior to or at the time of assignment was the first purchaser seized of an equitable estate of inheritance in the land.

To test Price and Seymour's case by that, we must suppose, after Porter had contracted to sell, as he had a right and was required to do, *Brown had refused to execute a deed to purchasers.*

Without entering into the question whether Porter could in such case maintain an action at law—the case being parallel to Stow vs. Robinson, in the fact that Porter (as well as Rattray) was the person whose right and duty it was to make the sales (but in this respect differing from Seymour and Price's case), without, we say, entering into that question, it is clear, from Stow vs. Robinson, that Porter would have had a right to compel Brown, by a bill filed in equity, to proceed with sales and give deeds, or in other words, he could have *enforced a specific execution of the contract.*

Why is this? We answer, because Porter, just as Rattray, and just as Price in this case, for the same reason, was by contract *interested in an equal half of the profits of those sales*, and the refusal in either case to permit the sales to be consummated by deeds, a re-

fusal by the holder of the legal title, was an act of *downright fraud* —refusing to do the act which he held the title for the purpose of doing. The jurisdiction of chancery in such cases rests on the ground of *fraud as well.* It would have been fraudulent in Brown, *fraudulent* in Robinson, to refuse to give deeds; and in Seymour's case he was both bound to sell when the proper time should come, and bound to give deeds to purchasers, so as to give Price *an equal half of the profits*, and it is in fraud of the contract to refuse to do so.

The case of speculative purchases of land for joint and equal communion of profits between the capitalist, who puts in his money, *and the skilled purchaser*, who selects and invests the money, stand on a basis quite different, in some respects, from mere mercantile partnerships. These involve questions of *dower*, and no doubt, from the adjudged cases, if the land is all paid for, and the partnership is out of debt, the wives of each partner in merely mercantile partnerships are entitled to *dower*, each in the share her husband owned, and no matter in which of the partners the title was vested, if in one he held the other shares of his co-partners *in trust* for them severally, and their widows would be entitled to dower in the equitable estate of inheritance, held in trust for them or their husbands severally. But Price's widow, if he had left one, would not have been entitled to dower, on the same principle adopted in Porter vs. Ewing; because the estate was held in trust, to be sure, *but as personalty*, bought for sale and dedicated to sale, and *instead of dower*, a widow thus situated must await a sale, and look for her distributive share in the personal estate of her husband, increased, of course, by his participation of the profits.

Price and Seymour adventured in a *single, definite, isolated* investment in land.

The contract of the parties was a *dedication* of the land to market sales, as much as for Seymour to have said in advance:

You buy, take deeds in my name for my eventual security, and *I pledge myself to sell*; I *dedicate* the land to sales in market, within

five years; so *I intend, so I agree—half the net profits* shall be yours after the land is converted.

Price is none the less entitled to half the profits, *as profits*, by reason of the clause, "which one-half the profits shall be in full of his services and expenses of every kind, in making the aforesaid explorations, searches, and in doing all such other things as might be requisite and proper, in making the contemplated purchases."

Seymour was obviously a very cautious man, and the *ghost* of Price coming in for pay after he had got one-half the profits, so haunted his imagination, that, at the close, *he reduplicates the negative proviso.* "*No payment for services or expenses* will be made by said Henry, except from the profits made as aforesaid." *This*, he says, "is understood."

Now, we call the attention of the court *most especially* to this repetition.

It appears to us decisive of the point in dispute.

We therefore affirm, as self-evident, that this *repeating clause* is *identical* in meaning with the first clause above quoted. Identical—and what is it? but saying in so many words, *I* "*make no payment for services or expenses*,"—"except." This word is used unphilosophically—i. e., it is a word you are forced to interpret, else you cannot understand the clause it introduces. But it is a *connective*, binding together the two parts of the sentence, and the meaning is quite clear—that is to say—"you get your pay for services and expenses out of the profits, if you get any at all. You can call that your pay or not, as you please. I don't pay any more to you in any event. If you don't get it thence, you go without it. As for *services* and *expenses*, as such, I don't agree TO PAY you anything, *unless—except*—that is called payment, which is, to be sure, rather a forced name to be applied to any equal partner in the profits."

This, we submit, is both the spirit and the obvious, literal

meaning of the words, and we insist it fully explains and elucidates the first clause quoted.

It confesses a co-partnership by repudiating the idea of *hiring Price* as an *Agent*—or paying him anything for *services* as such—the subjunctive form or conditionality of the expression is equivalent to saying, or at least directly *implying*, that the profits referred to are not payment IN A DIRECT or proper sense, but only *sub modo*. The word *except* is used as equivalent to *unless*. Now, look, if your honor please, once more to Stow vs. Robinson. "For which privilege (i. e., privilege of selling and having one-half the profits,) said Rattray is to survey and subdivide the said lot or block, and advertise and sell the same at his own expense."

These were his *services*, *expressly stipulated* for "*at his own expense;*" they are called *services* by the court, to be repaid by one-half the profits beyond cost and interest, (i. e., net profits—amount $965, and interest, to be refunded to Robinson.)

And yet the court say: "If Robinson prevented a sale by refusing to deed, *Rattray* (although he also had a right to sue at law for damages) might have compelled him by bill to permit the sale of the lots to proceed, *and thus compel a specific execution of the contract.*"

So also in the case between Porter and Brown.

In the present case of Price and Seymour, however, there is a feature in which, as before noted, their contract was the most stringent and nervously binding of any one of the three. *Seymour only could sell or give deeds.* He bound himself, he pledged himself, that *he* would sell. And Price fully performed the contract in every punctilio on his part; nay, that is not all: He went over and beyond performing, and did a *vast deal more* that was not at all required of him by the contract, (a supererogation so great and remarkable that the answers show it to be a *dead weight on the consciences of the Seymours*, and we certainly wish to acknowledge it as greatly to their credit, not by any means to disparage them in the least degree

whatever, we say it was such an oppressive burden on the consciences of the Seymours that, one and all, *they protest themselves to be ready and willing to pay him therefor the uttermost farthing*, whatever it is worth, and we don't know but they also intimate at least they will pay *very liberally* if they may thus be let off,) and yet it is contended that by means of *that masterly negative of not selling*, Seymour's estate *becomes entitled to all the profits*, and Price or his estate *forfeit everything, and must go wholly unrewarded, must lose all.* (VERILY, VERILY, the counsel are by no means as careful of the honor and conscience of their clients as the clients themselves.)

But the idea is monstrous and unnatural. We therefore say the parties *could not so have intended.* It would make the most one sided contract ever entered into. It would stultify Mr. Price to have become a party to such a contract.

Equally unnatural would it be (for it is only an ingenious mode of coming at the same conclusion,) to construe the contract as an agreement on Seymour's part to give Price one-half of what profits he could make in five years.

If the parties had any such meaning they would certainly have said so. It would have required no more words.

But the selfishness of such a proposal we may well suppose would have drawn out from Mr. Price, (for he was close in a bargain, as everybody knew, a shrewd man.) "*But*, Mr. Seymour, you may die before the five years expire. The land, too, may be unsaleable just when the time set for sale is about to expire, or we may either or both of us see that great improvements inaugurated and progressing in the country, and requiring time to complete, may make it desirable to prolong and not to sell prematurely."

What would be more natural than for Seymour to have replied in such case: "Very well, we will not say you shall have one-half

of what may be made by the rise or profits within five years; but thus: I will agree to sell within five years and give you one-half the net profits—and as *the obligation to sell rests wholly on me*, if I don't sell, I shall still remain under obligation to sell, and you will get your one-half when I do sell, *sooner or later*. In the cases you suppose we must advise each other; you will be on the spot and know best, and if circumstances require, you must advise against selling. No doubt I shall follow your counsel, as our interests will be identical, and neither of us expect to be under any necessity to sell. I certainly shall not desire to sell if the market is low, and you will not wish me to, and so we must, of course, hold on for better times."

This is precisely and exactly what the parties did. The answers all say they consulted Price *about selling*, and *no doubt they did, and no doubt* he advised them that the full time to sell had not yet arrived, but was *on the wing near by*.

Why? why? do they not produce Price's letters?—in evidence, if, as they say, Price *waived, excused and released* any sale by defendants under the contract?

It is an old saying that *actions speak louder than words*. We have shown that during all the days of delay, their *actions corresponded* perfectly with the relations in which Price stood towards them, and corresponded also with Price's views and determination that the investment should come out a profitable one. So much for *actions* and the old proverb.

We wish, also, to add, there is another proverb:

Sometimes, silence is the most emphatic mode of speaking.

Why do they not produce Price's letters of advice on selling? Why? if as they say, he *waived* and *abandoned* his right to a partnership sale?

The cases cited by opposing counsel from 6 *Metcalf*, 90, case of *Appleton & Cooper*,—24 *Ills. R.* 483, *Faucet, Isham & Co. vs.*

Stevens et al., are cases which illustrate admirably (and we acknowledge, therefore, our obligations to the learned counsel for such opportune cases), we say they admirably illustrate *profits received* not *as profits* so as to create a partnership, *but* as a mode of compensation for services as distinguished from cases where *profits come as profits, and do prove thereby a partnership.*

In the first case, Cooper, a manufacturer, with a mill in the country, which he owned, manufactured the satinetts for a Boston company, who furnished the materials, and Cooper was to be paid therefor *a certain price per yard for every yard he manufactured;* and, as a further inducement, no doubt to stimulate the manufacturer to greater diligence and faithfulness, (as well as to get the price per yard put very low,) Appleton & Co. agree, in addition, to keep an account of sales and profits, and to pay the manufacturer half the clear profits, in addition to the price per yard.

So in the case of Faucet, Isham & Co. They, from New York furnished hides, and Stevens & Co., tanners, up the river at their own tannery, agreed to *tan* them *at so much per pound* (*five cents*) *for every pound of leather returned to them in a manufactured state;* and upon Stevens & Co. so returning the hides to the firm of F. Isham & Co., in New York, in the shape of tanned leather, and now increased in value some 50 or 100 per cent., they agree to keep an account of sales, and beyond, or over and above the five cents per pound, to pay Stevens halt the clear profits.

In both cases, it is clear that no partnership existed.

It was a convenient, though round about way of hiring and paying a manufacturer, in a mode calculated to stimulate him to promptness in performance, and to perform well and faithfully, and withal, to get the first price put down at a low figure—and so the court expressly say in the last case.

We can easily suppose an arrangement of the same kind between Price and Seymour.

Suppose Price to have been obligated to keep an account of his *time and expenses* in exploring and locating land, for which Sey-

mour agrees to pay him $5 per day, and all his traveling and other expenses; and also, if you please, a per centage on the purchase price of each lot, as a compensation for his *skill and sagacity*, payable as soon as the work is done.

And, to stimulate his efforts to the highest pitch, Seymour adds, that he will keep an account of sales, and pay to Price half the net profits, in addition to the previous payment.

How different from that is the contract before the court?

Price is obligated, "*forthwith*," to devote his *time and attention and exercise his best judgment* in exploring and purchasing, "*as most advantageous*;" purchases to be made "*after full and careful searches and explorations*," "*for most profitable investments.*"

(Everything Seymour requires to be done in the *superlative degree of excellence.*)

"On or near tke "*sites of towns*," or "*expected sites of towns or places of business.*"

(These towns were as yet in the *womb of futurity*, and Price was *stringently required to pierce through the mill stone of ages*), "and in general in tracts of moderate extent."

No sinecure job, this!!

We now are prepared to remark: By this contract, though Seymour was to put in *all the money*, it is no small compliment (coming from such a man as *Henry Seymour*) that it equally provided that Price should put in *all the brains.*

His contribution to the common stock *as far exceeded Seymour's* in fact, as the *human intellect outweighs base metal*, be it *iron, lead, silver or gold.*

It is one of the greatest of *misnomers* to call *the dollar omnipotent* or *almighty.*

Price was no pauper.

Bachelor though he was, he was also a *princely leader* among capitalists.

There was not *his equal* in the State of Illinois in his line of business!!

And yet the learned counsel wish this court to believe that Jeremiah Price (the foundation of whose fortune was laid long before this contract) was weak enough, silly enough, and so desperately out of employment as *to hire out his talents, his experience, his skill, sagacity and judgment* in a bargain which obligated him, in writing, *forthwith* to make himself *omnipresent all through the West where the scent of land was*, to select and purchase it, and secure the titles in Henry Seymour, on an advance of $5,000—and while Seymour should, in no event, ever lose one cent of the money or its interest at 7 per cent., nor the taxes or expenses he should incur, and the interest thereon also to be superadded. YET he, Price, was to have, for all his contributions to the capital stock, *absolutely nothing*, *unless*, forsooth, Seymour (after reimbursement in full) should make a profit within five pears; *and then!* he would pay him half *as wages of a laborer! a day laborer!* having, to be sure, *some skill in scenting good land!*

Credat Judæus Apella—non ego.

The counsel for the defendants cited the case of *Hazard vs. Hazard*, 1 *Story R.*, 371.

This case will be found, on examination, to establish the same points of law and equity as the case of *Faucett, Isham & Co.*, with *Stevens*, cited from 24 *Ills., R.*, 485, being the case touching the manufacture of leather—the same also as the case of *Appleton & Co.* with *Cooper*, cited from 6 *Metcalf R.*, page 90, being the case of satinett manufactured.

All the facts in the case, and the opinion of Judge Story, shows that this was a case of *hiring only*, and the written memorandum states, in express terms, that the shares in the profits to

which B. Hazard was entitled was given to, and to be received by him, merely as his reward for services yearly rendered.

T. R. Hazard owned both factories and all the machinery; purchased all the materials; sold all the goods manufactured. The factory books were to be kept in his name, and all the manufactured articles were to be charged over to him, and delivered to him; and thereupon Judge Story says, at page 376: "*That* the one-third or one-fourth of the profits allowed by the agreement to Benj. Hazard was merely *a mode of paying him as agent for his superintendency of the factories.*"

In the case of *Ogden* vs. *Astor*, cited also by the defendants, from 4 *Sandf. Superior Court. R. p.* 311, we would observe:

The court decided in that case that Ogden was a *partner* with Astor in a commercial business at Canton, in China, *notwithstanding* the agreement expressly states that Ogden was to receive one-fifth of the net profits "*On consideration* of your making no charge for the transaction of my business." See the opinion of the court at the foot of page 321; though the court expressly recognize, in the same connection, as we have all along admitted and stated, "that it is well settled that a participation by a party in the profits of any business, *simply as a compensation for his labor and services* without having any interest in the capital stock, *or in the profits, as such*, or any right to control the business, does not make him a partner. He must have a right to the profits *as profits;* i. e., as the result of the capital and industry in which both are interested, and not as a measure of compensation merely, and be liable for losses."

The whole case, in deciding whether or not a partnership existed between Ogden and Astor, depended on the right consideration given to the circumstances alluded to in the above extract.

Let it also be observed: That case was one of a purely mercantile transaction, exclusively confined to the China trade and commerce, and having no land aspect whatever.

The circumstance of absence of control over the commodities in the managing person, whether or not it existed, becomes in such cases one of great importance to determine whether the manager of the business was also a partner.

It is not so, however, in land speculations, especially when confined to a single adventure, as with Price and Seymour. In such cases nothing is more common than that the partner furnishing the money capital also holds the title for his own security, and as a matter of course he is therefore also charged with the duty of selling.

POINT SECOND.

The two parcels of land purchased by John F. Seymour, on foreclosure of mortgage given to secure purchase money, on sales by Mr. High, were not thereby detached from the original trust by which the heirs held them; but were merely restored or brought back to the original trust. He still holds the same as trustee for all the parties interested.

This point is too plain for discussion. We need only to refer to the facts sworn to by Mr. Coventry, as reported by the master, that is to say: That Mr. John F. Seymour, the purchaser, was one of the heirs and devisees of Henry Seymour, deceased. That he never paid anything as purchase money on said purchase, nor was any part thereof ever accounted to or reckoned in the proceeds of the land sold, and that all the expenses of foreclosure and sale, as well as the recording of the master's deeds to said John F. Seymour, were paid by said Coventry, as solicitor for John F. Seymour and the other heirs, as complainants, out of the funds and moneys in his hands, as agent and attorney for the said heirs and devisees, being the funds mentioned in and appurtenant to this suit, as his accounts rendered more fully shows.

POINT THIRD.

Courts of Chancery have exclusive jurisdiction in the closing up and settlement of partnership business and accounts.

1 *Sto. Eq. Jur., Sec.* 683. "This review, &c., does establish in the most conclusive manner *the utter inadequacy* of Courts of Law to administer justice in most cases growing out of *partnership*, and the indispensable necessity of resorting to Courts of Equity *for plain, complete and adequate relief.*

"When *a discovery, an account, a contribution, an injunction, a dissolution* is sought in cases of partnership, or even when *a due enforcement of partnership rights, duties and credits* is required, it is impossible not to see that generally a resort to courts of law would be *little more than a mockery of justice.*"

"Hence it can excite no surprise, that courts of equity now exercise *a full concurrent jurisdiction with courts of law in all matters of partnership*, and indeed *practically* they exercise *an exclusive jurisdiction* over the subject in *all cases* of complexity or difficulty.

1 *Sto. Eq. Jur.*, 663. "*Death of either partner puts an end to all law remedies* in partnership, for the action of account being a remedy founded in privity between the parties, *no suit lay by or against the personl representative of the deceased partner to compel an account.*

Idem, Sec. 659. "Another head of concurrent jurisdiction is in relation to partnership.

"In cases at law, when a remedy actually exists, (in partnership cases,) it is often found to be very *imperfect, inconvenient and circuitous.*

"But in a very great variety of cases there is in fact *no remedy at all at law* to meet the exigency of the case."

Mitford's Pl., page 2, *note.*

"Their (i. e. Eq. Courts of U. S.) equity, jurisdiction and jurisprudence are coincident and coextensive with the *English*, and are not regulated by the municipal jurisprudence of the State where the court sits, and their practice is based on that of the court of Chancery of England (cites *Robinson vs. Campbell*, 3 *Wheat.* 212).

4 *Cond. Rep.* 238–9, 235, 404 and 408, and note on p. 240.
4 *Wheat.* 108, *U. S. vs. Howland.*
2 *Sto. R.* 567, 553, *Fletcher vs Mowry.*
2 *Sumner R.* 625, *Smith vs. Burnham.*
Kent's Com. Story's Com. Conkling's Tr. Barb. Pr., and Graham on Jurisdiction.

See, also, *Enc. Am.* article, approved by Prof. Amos. Extract on p. 2 (*Mitford*) note to this effect: "The most general description of a court of equity is, that it has jurisdiction in cases where *a plain, adequate and complete remedy cannot be had at law*, &c.

Sto. Eq., *Sec.* 661. "*Both* these remedies *covenant* and *assumpsit* at law are utterly inadequate."

Sec. 662 next—"*Action of account at law;* this, also, is *inadequate, dilatory, cumbrous* and *inconvenient.*"

Sec. 666. "The remedial justice administered by courts of equity is far more *complete, extensive and various, adapting itself* to the particular nature of the grievance, and granting relief in the most beneficial and effectual manner, when no redress whatever, or *very imperfect*, could be obtained at law."

Sec. 671. "Courts of equity provide a more effectual settlement of all accounts of a partnership *after dissolution*, and take steps which law courts cannot do."

Sec. 672. "Not only is an account ordered, but, if necessary, a *receiver* or *manager* will be appointed *to close the partnership*

business, and to make sale of the partnership property, so as to make a final distribution."

7 *Paige R.*, 560. *Varet vs. N. Y. Eq. Ins. Co.*

"The court of Chancery is not at liberty to relinquish its ancient and acknowledged jurisdiction of a case, although courts of law may now afford a remedy to parties in like cases by equitable action of assumpsit."

Or, in the language of an English vice chancellor, "This court is not at liberty to give up its jurisdiction *because courts of law have fallen in love with it.*"

The American courts fully recognize the doctrine that during the existence of a partnership, or even after its dissolution, but before the business is wound up, and the final balance ascertained, no action at law will lie between the partners; for which see

7 *Pick. R.*, 59. *Haskell* vs. *Adams.*
12 *Pick. R.*, 378. *Williams* vs. *Henshaw.*
3 *Pick. R.*, 420. *Fanning* vs. *Chadwick.*
2 *Harr & Gill.*, 295. *Causten* vs. *Burk.*
18 *Maine*, 211. *Chase* vs. *Garvin.*
3 *Harris & Johns*, 194. *Kennedy* vs. *McFadon.*
14 *Johns. R.*, 318. *Murray* vs. *Bugert.*
2 *Scamm. R.*, 495. *Davenport* vs. *Gear.*

The rule above laid down is the common law of England, and it will be seen by the authorities above cited that it has received the sanction of the courts of this country.

POINT FOURTH.

The *Statute of Limitations* cannot be set up in bar of suit in cases of partnership or trust.

1 *Dev. Ch. R.* 533. *McNair vs. Rayland.*

"Partners are trustees for each other, and the statute of limitations *will not*, it seems, run against their liability to account to each other."

2 *Eq. Digest.* See cases on the same subject in 2 *Eq. Dig. p.* 257, under heading (*c.*) *Trusts.*

Idem, (*Digest*) *Sec.* 113: "When a trustee does an act purporting *to be a final execution of the trust*, the statute of limitations begins to run upon a demand against him by the *cestuy que trust.*

Moore vs. Porcher. 1 *Bailey Ch.* 195.

Idem Sec. 117. "The possession of the executors of a trustee *is a continuation of the trustee's possession, and the statute does not run in his favor. Martin vs. Greer. Gev. Decis.*, 109.

Idem. Sec. 118. "If a trustee holds over after expiration of trust, his possession is for *cestuy que trust*, and no bar is created in his favor."

Idem, Sec. 119: "The statute does not begin to run in favor of a trustee until his possession becomes *adverse by a refusal* to deliver up the trust property, or an appropriation of it by him."

Idem Sec. 120: "In the case of a strict trust, and when no fraud has been practiced, the statute will not operate *proprio vigore* unless, perhaps when trustee, has placed himself *in a position antagonistical to the cestuy que trust*, or fraud has been discovered." *Wood vs. Wood*, 3 *Alab.* 756.

Idem. Sec. 121: "The only trusts not within the Statute of Limitations, are those which are peculiarly and exclusively the subjects of equity jurisdiction, and *where the subject matter of a trust can be sued at law* the statute may be insisted on as a bar, though the suit is in equity." *Maury vs. Mason*, 8 *Porter* 210–11.

Idem. Sec. 126: "The doctrine that the Statute of Limitations does not run against trusts is based on the ground that the possession of trustees is the possession of the *cestuy que trust*," (and does

not apply when the trustee holds adversely to the *cestuy que trust.*) *Avery vs. Holland.* 2 *Overton.* 71.

Idem, Sec. 132: "Technical and continuing trusts, which are not cognizable at law, etc., do not come within the operation of the Statute of Limitations.

3 *Johns. Ch. R.* 190. *Decouche vs. Savitier.*

"No lapse of time is a bar to a direct technical trust, as between the trustee and *cestuy que trust.*"

7 *Johns. Ch. R.* 90. *Kane vs. Bloodgood.*

"This (however) is to be understood of those trusts of which chancery has the peculiar and exclusive jurisdiction."

See Ch. Kent's elucidation of this point at page 111: "*Rule*—The trusts intended by the courts of equity, not to be reached or affected by the Statute of Limitations, are those technical and continuing trusts which are not at all cognizable at law, but fall within the *proper, peculiar and exclusive* jurisdiction of equity."

So, p. 114: "Trusts not within the statute are those which are the creatures of courts of equity, and not within the cognizance of courts of law." And "The statue would be *a bar to a bill for an account*, whenever it would be a bar *to an action* at common law for the same matter, and for which the party might have had his action of account."

So, p. 118: "When there is a *legal* and an *equitable* remedy in respect to the same subject matter, the latter is as much under the control of the statute bar as the former."

So, p. 121: "I understand Lord Redesdale to mean that if the party has a legal title, and a legal right of action, and instead of proceeding at law resorts to equity, instead of bringing his *action of account*, or *detinue*, or case for money had and received at law, *files his bill for account*, the same period of time that would bar him at law will bar him in equity."

So, at page 123, Ch. Kent says: "Time does not bar a direct trust as between *cestuy que trust* and trustee. This is precisely the same principle that applies at law to tenants in common, where the statute does not run, except from actual ouster, because the possession of one is not adverse to the rights of the other, but is in support of the common title. It does not bar, so long as the trust is *a continuing* and acknowledged trust. But, supposing the trustee was to deny the right of the *cestuy que trust*, and assume absolute ownership, as this would be equivalent to ouster in case of a tenancy in common, the statute would then be a bar (i. e., when time enough had elapsed).

So, p. 124. Chancellor Kent quotes *Beckford* vs. *Wade*, 17 *Vesey*, 87: "As our statute (says the Master of the Rolls, Sir Wm. Grant,) bars only *legal remedies*, of course it has no direct operation upon trusts for which there was no remedy but in courts of equity. It is for those trusts for which there was no remedy but in courts of equity that the statute does not operate."

So, Ch. Kent says, at page 125: "The doctrine (is) that no time bars, in case of a direct or express trust continuing or subsisting as between the parties to the trust."

See, also, *Spencer, Ch. J.*, in note to above case page 127, taken from 20 *Johns.* 576–610: "When jurisdiction of law and equity courts is *concurrent*, the Statute of Limitations bars, *but not* in cases of trusts exclusively of equity jurisdiction."

See, also, the head note of case 7 *Johns. C.*, 90.

6 *Wheat. R.*, 497, *Prevost vs. Gratz.* In this case Judge Story says:

"It is certainly true that no length of time is a bar to a trust clearly established.

Above, also, he says: "The trust being once established, *the burden of proof is shifted upon the other party to show its extinguishment.*"

No doubt it is competent for Seymours, if they can, to show that the trust estate held by Henry Seymour for Price *has been extinguished.*

The answers seem to have some bearing, in some parts, to such a conclusion. But as no proof whatever is given with any such view, the original trust *continues;* and this (continuance) is corroborated strongly by the fact that both parties agree perfectly as to the cause of the delay and no sale made. *Land was down in market value; no sale was possible at any remunerative price; no possesion taken by either party.* The *res* still existing unchanged.

Now, certainly, if one party says the trust was extinguished, he is bound to prove it.

POINT FIFTH.

The defence of *laches, staleness or neglect* cannot be set up in this case as against Price, or his administrator.

1 *Howard R.*, 167. *McKnight vs. Taylor.*

Trust deed foreclosed.

Court say: "It appears that 19 years and 3 months were suffered to elapse before any application was made for the execution of the trust. No reason is assigned for the delay, nor is it alleged to have been occasioned by any obstacle thrown in the way by the appellant. It seems to have been the *result of mere negligence and laches.*"

14 *Peters*, 415. *Piatt* vs. *Vattier, &c.*

"There has been a clear adverse possession for 30 years, without the acknowledgment of any equity or trust estate in Bartle, and no circumstances stated in the bill or shown in evidence which overcome the decisive influence of such an adverse possession. Therefore (the court say), the claim is stale."

16 *Ills. R.*, 190. *King* vs. *Hamilton.* This is a case treating of both subjects—*staleness and the statute of limitations.*

This is a case of partnership transactions in land and personalty between three brothers, one remaining in England, others in Illinois. The money invested; sales made and the proceeds reinvested in Iowa. Business commenced in 1829, but was not before the Supreme Court till 1854—25 years after.

We only quote the case as containing these principles (p. 195). Scates, Justice, says:

"We must, therefore, put the proceeds of the two sales of cattle as individual property, and from its intimate connection and use with the partnership enterprise, we must put it, in relation to the statute of limitations, upon the same footing as the partnership trusts themselves, and *as a continuing trust.*"

The statute of limitations will not bar these as between trustee and *cestuy que trust*, whether it be *personalty* or *realty.*

"The distinction as to its not belonging to a court of equity—or its staleness by lapse of time—*do not affect it*, because it is so intimately blended with the partnership enterprise as a *continuing equitable trust*, that we are not shown when the partnership lost the right to its further use, and when the action accrued for the return of this sum.

15 *N. H. Rep.*, 413. *Great Falls Co.* vs. *Worcester.*

Neglect for more than 20 years to assert a claim to an *undivided interest* in lands, by one who had a valid title *does not operate as an abandonment, if there be no adverse possession.*

7 *Howard's Reports*, 234. *Wagner et al. vs. Baird et al.*

"This is a most useful case *on stale claims* sued in chancery, showing in vast numbers of cases the rationale of cases of this kind as treated in equity." The time elapsed in this case was from 40 *to* 50 *years.* It was a claim to land originally of trifling value,

and against *defendants, who were innocent purchasers*, and who had made *great and valuable improvements* to $30,000 and over, whom to injure and *dispossess on a stale claim* would involve the *greatest hardship*.

But, *e contra*, in the case in hand, of *Price's adm'r* vs. *Seymour's representatives and heirs*: The property purchased remains on hand *in solido*, the identical property; *no change* in its character; it is all unimproved lands, no improvements made since purchase, no third persons' rights or interests (as *purchasers* or *incumbrancers*), no *adverse or other possession* of any part of the property have intervened. *Indeed*, nothing has occurred in the interim. But the very thing itself *at last occurred* which, as a motive in anticipation, inspired the parties to make the purchases—that is to say—the property in 1855 *rose* in *market value* so as to become SALEABLE, and thus answer the end of purchasing.

This, instead of showing *laches*, or sleeping on his rights, in Price (or Seymour even), shows the very reverse thereof; shows *vigilance, carefulness, wakefulness*, and a patient and steady aim at the original object of the investment, with a fidelity and devotion to the true interest of his associates (as well as of himself) unwavering as the sun.

Laches is neglect of one's rights and interests, filling up the measure of a period during which (as is afterwards *presumed* in law) the evidence is lost which would show that the parties *had settled, paid up*, or *otherwise adjusted* their business transactions.

The rationale of its operation to bar a claim is, because we know that whatever men value and prize highly, they do attend to and guard with care and vigilance.

The omission, therefore, of care and vigilance for a very long period, shows conclusively that in the supposed claim or right demanded there was in reality nothing to excite care and diligence; or, in other words, that there was *nothing of it or in it*, because it had

been put an end to by mutual agreement of the parties—as otherwise they would not have been guilty of laches or neglect, and suffering the claim to become stale.

So far, indeed, is the imputation of *laches*, as against Price and his representatives, from being just or true in this case, that *e contra*, *we see:*

1st. The claim of Price to an equal share in the profits on this investment was evidenced by a written contract, of which each party held a copy signed by both.

2d. Seymour's death before the five years allowed for selling had half expired, accounts for his not proceeding to sell.

3d. At the end of the five years, though Price might have compelled a sale by filing a bill, *yet* the state of the market was such that it would have been the *height of folly* to have done so.

4th. Equal folly would it have been for Seymours to have sold.

5th. The very course, *natural and reasonable*, in such case to be taken by any correct business man, the only course consistent with the interest of all parties, was the very course adopted, *i. e. to hold on for a better market.*

6th. The parties interested doing this thing *concurrently*, though there is no evidence of mutual consultation and preconcert therein; it is *presumed and presumable* that they both *so intended to do*, which also presumptively proves *consultation, mutual and preconcerted arrangement.* On a second thought we perceive we here admit too much. In the joint and several answers defendants do admit "that *they consulted Price as to the expediency* of sales, and requested his general oversight.

For: It is the most violent of all presumptions that *their acts resulted from their intentions.*

7th. In the course taken both parties were *actors.* They *co-operated* to do and effect the same thing, i. e., *to give the due and all the necessary attention to the investment,* (Seymours by furnishing the money to pay the taxes, and Price by paying over the same and preventing trespasses by suits and damages,) *until the time should arrive when profits could be made.*

8th. In so doing *Price* WAS THE PRINCIPAL ACTOR, doing nearly all that was done, or that was possible in reason, to fulfill the end of the investment, thus completely foreclosing the least and every possible imputation of *laches* or neglect on his part.

9th. This continued from 1840 down to 1855, a period of 15 years.

Then, *on the first chance occuring for profits to be made by sales,* Seymours, *with the aid of Price's administrator,* being equally vigilant, commenced selling.

10th. And Price's administrator, to continue his vigilance, began to agitate his claim for a share of profits, and, *as soon as denied him* by Seymour's representatives, filed this bill.

So far in fact is this case from being one that is characterized by *laches, negligence or staleness,* we pronounce it on the contrary rather in reality *a race for profits* between two well matched and keen scented speculators.

Both the original combatants died before the race could possibly terminate successfully, (*both were to share the prize*). *One died* before the period set for sale had arrived; the other with disinterested (because equally enuring to the other party) and devoted vigilance and fidelity held the even scales, in abeyance only, till he also died.

Then the representatives of both, on the first and speedy discovery of a chance to close the concern profitably, *re*-commenced the race, each party acting promptly, eagerly and wakefully; *fit successors to such predecessors ! ! !*

Appropriate to the points made and enumerated above, see cases cited in

Collyer on P., Sec. 327, where Lord Eldon says:

"I consider myself bound, therefore, by authority and reason to hold that the the *nature of the trade*, the *manner of carrying it on*, the *capital employed*, the *state of account* between the partnership and the deceased partner at the time of his death, AND *the conduct of the parties after his death* MATERIALLY affect the rights of the parties.

He also speaks of *the impossibility of subjecting cases so various as those of trading partnerships to any universal rule.*"

Observe, also the form of the expression: "*The conduct of the parties after death,*" as introductory to the assertion that the conduct of Seymour's heirs and devisees *after his death and after Price's death*, till this bill was filed, has a clear and unmistakable bearing on the question of the construction of their mutual rights as partners and those who represent and succeed them.

(1.) Seymour's death occurred 2½ years, only, after the contract (and so before he agreed to sell).

(2.) Seymour's representatives and heirs (after the death of ancestor) continued the care and management of the property in Price's hands solely down to his death.

(3.) Then they committed the same trust and oversight, with the superadded care and responsibility of *sales* thereof, to Price's administrator.

Hence, we infer, it is clearly shown that Seymour's representatives, heirs, and devisees view Mr. *Price* as the man *of all others* fit and proper to continue in charge of the property, to do therefor all the *little*, as they say (and we concur), that was desirable to be done to nurse it along. They *repose* in *his skill, ability*, and fidelity unlimited confidence (as well they might). They prefer him, indeed

before themselves, *till death*, and then continue the same identical *confidence*, trust, and *fidei commissa* to his administrator.

And, *at the very first moment it is seen to be judicious, with a view to profits, they put him about sales.*

This, instead of showing laches, or sleeping over one's rights, shows *the highest possible degree of vigilance, carefulness and wakefulness* that the subject matter, under the circumstances, admitted of, and a *patient* and *steady aim* at the *original object of investment*, with a fidelity and devotion to the true interest of all the associates unwavering as the sun.

The business character of Henry Seymour, Jeremiah Price, and John High, from the *disjecta membra* of these various transactions, can be as accurately read and made known by a stranger even to their persons, provided that such reader is only a good judge of human nature, as a skillful naturalist will give you the size, shape and proportions of the *megatherium*, which flourished 10,000 ages before the flood, from the mere examination of a handful of his imperishable bones that have come down to us in the drift of the everlasting ages.

5 *Leigh's Rep.*, 686. *Williams* vs. *Lewis.*

The *facts* in the case are these:

Williams (complainant), in 1774, agreed verbally with Charles Lewis, father of the defendant, to purchase from him 45 acres of land, parcel of a tract to which Lewis had only an inchoate right in *a survey* made by him (which is a kind of preliminary entry on State Lands, which their law allows any person to make who wishes to purchase from the State), in a survey called *Block Camp.*

Williams paid Lewis for this 45 acres in full, and entered into possession, but never had a deed.

Charles Lewis soon after died, devising the whole of *Block Camp survey* to the defendant, his son, Andrew Lewis.

Andrew, at some times, was proved to have acknowledged Williams' equitable title, and treated with him about a deed, but never executed any.

About 1801, Andrew Lewis went on with his father's entry proceedings, paid up for the whole survey, and obtained a patent from the State.

Williams, in 1822, filed this bill against Andrew Lewis to force him, by deed of the 45 acres, to execute specifically the agreement of purchase which he made with Charles Lewis in 1774 (48 years before), alleging that Andrew held the same *in trust* for him, identical with the trust obligation resting originally upon his ancestor, Charles Lewis, in his life time, and ever since 1774.

Andrew Lewis relied upon the 5 years Virginia *statute of limitations*, and upon the alleged *staleness* and age of Williams' claim.

There are other subjects of controversy in the same suit, but this 45 acres is all that is necessary for us to look to.

By the Court:

All the Judges agree that the defenee was not tenable.

Carr (Justice) says, at page 691: "The statute of limitations *is no bar*, because (1) the plaintiff, Williams, was in possession, (2,) and also because from the moment the defendant (Andrew Lewis) obtained the grant (in 1801), he held the 45 acres *in trust* for Williams."

Cabell (Justice) concurred.

Tucker, (*President of the Court*,) p. 693, at bottom, says, (speaking of Williams' full and adequate payment, 1774, to Charles Lewis:)

"It does not become him, (Charles Lewis,) or those who claim under him, after a lapse of 60 years, to call in question the adequacy

of payment which Charles Lewis was satisfied with at the time. STILL LESS, does it become him or them to set up the defense of the length of time in bar of this equitable title."

"*It is not admissible on the part of a vendor against his vendee.*"

"*The relation which they stand in to each other forbids it.* The *former is trustee* for the latter, and the trust can never be determined but by a conveyance of the title. The *vendor* can *never* be permitted to set up *his own omission* to make a deed against the rights of *the vendee* to demand one.

"*Yet less* can he invoke the aid of those cases which *discountenance* the assertion *of a stale equity* by a party out of possession against an adversary claimant in possession. For here Williams has been in continued and uninterrupted possession from about 1774 to the present day, (decided in 1834), the peaceful enjoyment of this equitable right, which has thus acquired strength by lapse of time and acquiescence, instead of being weakened and impaired."

Williams' possession, the judge observes, would sustain a *Writ of Right.* "But as he is in fact a claimant under Lewis, he (Williams) could not at law be permitted to defend himself by the Statute of Limitations.

"It is, then, but just (*e converso*) that *in this court* the same relation should protect him from a similar defence on the part of Lewis."

The court therefore sustain the bill for specific performance, and order a deed given by Andrew Lewis, the trustee, for that purpose, and reverse the decree of Greenbrier Circuit, dismissing the bill.

This, as we view it, is a very strong case, and though it goes much farther than we have any need of going, still we insist it states the law fairly and correctly.

The court will indulge us in a few remarks.

There is a formal difference, to be sure, between the case in Virginia Reports and Price's case, in this, that Price was not a *purchaser from* Seymour, but he was a purchaser *with* Seymour, and Seymour stood in the relation towards Price, of a co-partner, bound to sell and convey for Price's sake, so as to come at the *profits*, and this relation was such that we have shown courts of equity always sustain, and enforce its rights by a decree of specific performance. The relation of price and Seymour is, in principle, identical with the case in Virginia.

Again, the case in Virginia shows the *heirs* of a trustee to hold the lands descended subject to the same trust on which their ancestors held.

If it were not for this principle, indeed, thousands of trusts would fail, whereas, once being established, they must, of their own inherent nature, continue until, in the language of Judge Tucker, "they can *never* be determined but by a conveyance of the title."

"*The vendor*" (in Price's case, the person bound to execute the deeds, or act as vendor, Seymour,) "can never be permitted to set up *his own omission* to make a deed against the right of the vendee to demand one," and certainly Price had a right to demand *on his own account*, that Seymour, his trustee, execute the trust by selling and giving deeds, and by this suit he makes the demand, and the defendants repudiate the obligation.

In the next place, observe, Price *had fully paid on his part* his full share of contribution to the purchase of this land, and in this respect, it is seen, his position, as co-purchaser, is identical in principle with Williams, in the Virginia case.

The circumstances of William's *possession* is the only one in which the cases seem to differ, but it will be seen that that is only a circumstance which the court say strengthens his equitable estate.

In Price's case, the object of the purchase (*speculation*) itself forbade possession to either party, consequently, Price and Seymour, and Price's representatives and Seymour's heirs, stand upon a footing of perfect equality, so far as concerns possession.

But Price has fully performed—paid his full consideration, besides bestowing for long years succeeding perpetual care and watchfulness to and over the land, without fee or reward, and the idea of imputing *laches* or *staleness as against him*, is flatly contradictory to the principle "that a trustee can *only determine* by executing deeds as contracted for, and can *in no case* base the charge of *laches* or *staleness* on *his own omission to convey*.

5 *Anstr.* 925. *Jones vs. Price;* and 4 *Brown's Ch. Cas.* 332. *Pincke vs. Carteis.*

From these cases the following doctrine is quoted, and which we refer to as eminently exemplified by the position and conduct of Price and the Seymours towards each other, on the subject of postponing the sale of the lands in question.

"If neither party take any *timely step to quicken the other*, this may amount, on both sides, to an acquiescence in and waiver of the delay."

This is precisely what we have all along contended for; neither Price nor the Seymours took a single step designed to quicken the other party, until Mr. High demanded of the Seymours the rights of Price, and was refused; all prior to that was practical concord. They both concurred and co-operated to do *exactly and only* that which it was natural for partners to do; and their acts, both of omission and commission, indicated, beyond possibility of misconstruction, their intentions to be in like harmony.

POINT SIXTH.

Time was not material, nor in any sense the essence of the contract between Price and Seymour.

(We introduce this point for the reason, solely, that it was strenuously urged by Hon. A. Conkling on argument of the demurrer in 1857, that time was material and of the essence of the contract of May 9, 1835, on which this suit is grounded.)

The defendants, as we understand them, construe the contract between Seymour and Price, of May 9, 1835, as follows:

That Seymour having agreed to sell in five years, and no sale having taken place, he or his heirs cannot be required to sell at a later period; the land becomes absolutely his, divested of any trust or right in Price after the five years ended; and that Price can only sustain an action at law, or in equity, for such damages as he can show himself to have sustained by Seymours not selling within the time set by the contract.

This construction, we say, militates against the *nature* and *ends* of the *purchase*.

The property was purchased by the junction of *Seymour's capital in money* with Price's *time*, *skill*, *expenses* and *services* in selecting and locating the lands.

It was purchased (*expressly*) for the purpose of *sale on speculation*, for the *joint and equal profit of either party*.

And (though the title was to be in Seymour till sale) still it is evident that defendant's *construction* assumes that it must be, and was, at all times, optional with Seymour to sell, or *not* sell, and in case of any conflict arising between Seymour's interest and Price's, he (Seymour) would only be required to consider *how*, in his opinion, his own interest would be best promoted, and then he had a right to break his contract *ad libitum*.

Such a view of the contract, we contend, is unreasonable and monstrous.

It encourages a party to take advantage of his own wrong, which is never allowed, either in law or in equity.

The supposed construction wholly defeats, at the acknowledged option of a wrong doer, the end of the investment.

It completely disannuls the correct view of the case, which we think we have demonstrated to be *a partnership agreement in an adventure on real estate purchase.*

And we think we have shown that in all cases of partnership, courts of equity will aid the aggrieved party in real estate purchases, as well as in personal, and compel the party who holds the title to sell it; and to that end will appoint *a receiver* to make the sales and wind up the concern.

We have shown that, with this view, courts of equity always treat real estate purchased with partnership funds, or for partnership purposes, as "*personal estate*" *to all intents and purposes*, making no distinction, cutting off heirs and devisees in favor of personal representatives, who are to take and hold for purposes of distribution, and cutting off even a widow from dower therein, because the estate, though vested often in one partner, *deceased*, legally, is yet, in fact, held in equity only as a trust estate for all the partners.

To us it seems exceedingly absurd to suppose that Price could not have filed his bill to compel a sale on or after the 10th of May, 1840. He certainly could not *before* that time, and if he could have filed his bill then, he could equally do so on February 3, 1857, unless the statute of limitations bars it, or unless it has become *hopelessly stale.* These limitations (*statute* and *staleness*) we have already sufficiently obviated.

Price, then, stands now on the same grounds exactly as if he had filed his bill on the 10th of May, 1840.

An examination of all the authorities cited to sustain the doctrine of time, *when of the essence of the contract*—shows that to be a question which can only arise in cases between *vendor* and *vendee*, when payments are to be made *by a time set*, and, in default, *the*

contract to be void, either expressly or by implication (at the option of the vendor).

The present case *is not* a case between vendor and vendee, and if it were legal or conscionable to ask (*in a popular sense*): What is or was the essence of Price and Seymour's contract? the answer would be clear and palpable as the sun at noon: Its essence or vitalizing practical principle is *that land be bought so and so, to be sold for mutual and equal net profit of either party*.

This places the *essence* (if you so call it) in a material point, common to both parties, and upon the main feature of the contract —just as in Smith's Mercantile Law, p. 47 (margin 18th page), it is said, almost *totidem verbis*, "*Community of profit is the criterion* (he might as well have said *of the essence*) *whereby to ascertain whether the contract be really a partnership.*

The counsel opposed to us place the essence *on time* (*of sale, that is,*) a point which refers merely to the duty of *one of the parties* to the contract (Seymour), and he to be rewarded for a breach in that very point by a premium which, it is contended, is attached to and inseparable from his default, by virtue whereof he is to be adjudged thenceforward forever to be entitled to have everything *all his own way.*

Notice, the question to be decided in this view of the case is this, and neither more nor less. Did Seymour, by agreeing to sell in five years, and pay Price an equal half of the profits, mean merely that he would pay Price one equal half of what he might make by a sale within five years? And now the answer, in order to sustain the logic used on the other side, must be in these words: *He so intended, because he agreed to sell in five years. That is the essence, or of the essence of the agreement: and proves, incontestably, that as he was to sell in that time, and pay half the profits to Price, therefore, he was only to pay half the profits of a sale within that time,* WHETHER HE FULFILLED BY A SALE OR NOT. Observe, we are trying to ascertain what the contract meant when it was written out and signed.

We think the *inconclusiveness*, we might say, also, the *inanity* of such logic is transparent.

But observe further, the question, *what is the essence*, or of *the essence of a contract?* applied to contracts indiscriminately, is *an inappropriate and unmeaning expression.* There is none such in the books, and can be none *rerum natura.*

The expression, when truly and appropriately used, refers to a question often arising between vendor and purchaser, founded on the fact of a time or times set for payment of the purchase money and *a condition annexed*, (or else *inferred* as a matter of construction,) providing that in default of payment the contract is *to be void.* The meaning of the expression is then clear and sensible.

The parties have, by their contract in such case, made a *condition precedent*, hinging on *timely payment*; and the question, as to time, in such case, being of the very essence of the contract, becomes a sensible, and often an all important one; for it is difficult to ascertain whether the expressions of a contract, (or its implications,) will justify the pungent and strict construction which shall create an absolute, irrelievable forfeiture, for want of *punctuality* in time of payment.

Apply the same question: Is time of the essence of a contract? to a note of hand payable in sixty days, or a partnership contract, like the present, and its inappropriateness or out of place character becomes quite apparent, for it is, really, merely to ask, if Seymour's agreeing to sell in five years, and divide profits equally, is not *ipso facto evidence* that he only agrees to pay what he might make in five years, *whether he sold or not.* If he *had* sold in five years, *why then, all right.* But in case of no sale it presents a new question. Again, in order to use the doctrine of *time being of the essence against* a party, it must be shown that in some (5 *Leighs R.*) material point *timeliness* of performance of payment, made a condition on *his* part, has been neglected *by him*, and thereby he forfeited, (i. e., *he who is charged with default.*)

This doctrine is sought here to be applied *against* Price, who is admitted never to have made default!!!

In the first place, the contract itself imposes upon him no condition precedent, except to invest the $5,000 carefully, which is admitted to have been done, and *so, in the next place*, he is never in default.

The application *as against him*, of *time the essence*, is *a legal farce.*

Again, the same doctrine, when correctly applied, must be in favor of a party always ready and anxious to perform, or who *has performed*, and against a party who is in default of performance.

Defendants seek shelter under this doctrine *without pretending* ever to have *sold or performed* at all, and against Price, who they admit was in no default.

The counsel for defendants made a point on the argument that a court of equity will never decree *specific performance* of a covedant sounding in damages.

Without admitting this covenant to be one of that description, we dispute the correctness of the law as stated, and cite 2 *Story Eq. Ju., Sec.* 850.

"Courts of equity *will* decree *specific performance* of a general covenant to indemnify, although it *sounds in damages only* upon the principle of *quia timet.*" Also 6 *Johns. Ch. R.* 405–6. *Champion vs. Brown. Also, Sto. Eq. Ju. Sec.* 730.

We wholly deny our contract to be one sounding in damages; yet we refer to the cases simply to correct the counsel on this point of law.

We think we have established the following propositions:

FIRST.

That Price and Seymour, as between themselves, were joint and equal partners in the real estate adventure, which forms the basis of their written agreement, and of this suit.

SECOND.

That though the land in this case, as land, descended to the children of Seymour as heirs, yet having been purchased solely for purposes of sale, on speculation, for the benefit of several, it had thereby impressed upon it the character of *personalty*, and is so held and entitled to be treated in courts of equity.

THIRD.

That the death of either party, or of both, to a partnership, though it terminates the partnership as to further enterprises, or investments of a like nature, yet the partnership still subsists for the sole purpose of carrying out and winding up the concern.

This principle applies with peculiar force to the partnership of Price and Seymour, because the remaining unexecuted portion, that is to say, *the holding of the property for sale and the sale of it at the proper time*, and *the division and distribution of the profits*, was the whole body and substance of the partnership after the first purchase completed, and was all incumbent on Seymours.

FOURTH.

The partnership property, whether real or personal (in whomsoever the title may be vested), being held in trust for all the copartners, Seymour's heirs, as trustees in their father's place and stead, hold the property subject to the same trust, and are under the same obligations to Price or his representatives that their father, Henry Seymour, was under at the time of his death, in 1837, or would now be under, had he survived.

FIFTH.

The *time*, under any statute of limitations, can never run against a partnership or trust, such as exists in this case, any more than against a tenant in common without ouster.

SIXTH.

That, although in most cases a claim may become *stale* when, after great length of time elapsed, the *circumstances or condition of the property itself may be changed*, as by improvements, or the property may have gone into the hands of *bona fide* purchasers or incumbrancers, or on other like principles, YET, this cannot as easily occur in a case of partnership or trust, because the same principle which precludes the bar of the Statute of Limitations, applies with equal force to preclude the charge of staleness.

The following positions seem to exhaust the subject of *staleness:*

1st. A party standing as Seymours do, in this case, can never be permitted to charge against the opposite party staleness grounded on their own omission to do any act which they undertook or were equitably bound to do. The case from 5 *Leigh's Virginia Reports* states this very pointedly.

2d. And as to Price himself in that regard, he is to be looked to, *first* as touching his acts done *actively*, and, secondly, as to his omissions *passively:* As to the first, it is clear that he performed everything, and more, than the contract required, and was in no default whatever, *actively;* and as to the last, there was on his part nothing omitted which he was under any obligation to do; and the delay *suffered passively* is perfectly explained by equitable circumstances, showing it to have been a necessity arising from the very nature of the business and concurrent events not within his control.

3d. The two preceding points being established, then the general legal doctrine stands in full force, that the charge of staleness as well as the statute of limitations, can never arise or be made against trusts or partnerships.

SEVENTH.

That in a case of partnership, and trust consequent thereon once established, the burden of proof to show *abandonment* or *waiver* and *giving up* of *partnership* rights, so as to open the door for the charge of *staleness*, always devolves upon the party who sets it up.

EIGHTH.

That where the conduct of the parties to a partnership, during the period of supposed ripening into staleness, neglect or abandonment, is consistent and in accordance with a continued partnership holding of the property, then, in fact, the claim can no more become *stale* than it can be barred by the Statute of Limitations.

NINTH.

That the party setting up or affirming a claim to be stale or abandoned, is bound to prove it either by express admission or statements, or by circumstances and conduct of the party against whom it is alleged, which are unequivocal and unmistakable in their character.

TENTH.

That in the present case, not only is there a total failure of such proof by the defendants, but the complainant has shown by *bill and answer*, and by *proofs, circumstances and conduct* on his part, and Seymour's, not only perfectly consistent with his rights as a continuing partner, but such as show conclusively that the partnership holding of the property has never ceased or determined by any cause whatever.

And now, in conclusion, we have only to add:

The present suit was commenced and prosecuted by Mr. High while living, under the strongest conviction of duty to the heirs of Jeremiah Price.

No motive of inferior force could have induced him, embarrassed, as he was, by a retainer, implying confidence and trust reposed in him by the representatives of Seymour, to institute a suit in any degree antagonistic to the trust so last committed.

That antagonism, however, it should be remembered, was the necessary result of his being employed as agent by the Seymours *after* he had been previously committed by his oath, as administrator of Price, to guard the rights and interests of that estate.

The confidence thus last reposed in him must, therefore, be deemed to have been a compliment of the highest nature, inasmuch as it was bestowed in the open view, and in spite of the antagonism which Messrs. Seymour were fully aware of, and which they provided against, as stated in evidence by Mr. Coventry, by the reservation made on his appointment that it should not be deemed as having any connection with his character as administrator of Price.

While, therefore, we cheerfully concede that it had no such necessary connection, we also claim that Mr. High was equally bound, by a prior obligation of a most imperative and unchangeable nature, to consider himself disembarrassed on the score of Messrs. Seymour's agency, and at the most perfect liberty to act decidedly, nevertheless, whenever he should consider it his duty to assert and maintain the paramount rights and interests of Price's estate.

All of which is most respectfully submitted.

H. F. MATHER,

Solicitor and Counsel for Appellee.

Dated at WASHINGTON, D. C., January, 1867.